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No. 82-____

IN THE

Supreme Court of the United States

October Term, 1982

SUMMA CORPORATION,
Petitioner,

v.

STATE OF CALIFORNIA ex rel. STATE LANDS COMMISSION and CITY OF LOS ANGELES,
Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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TABLE OF CONTENTS

Page

Appendix A-1: Supreme Court Opinion A-1
Appendix A-2: Order Denying Rehearing A-33
Appendix A-3: Supreme Court Judgment A-34
Appendix A-4: Court of Appeal Opinion A-35
Appendix A-5: Trial Court Findings of Fact and Conclusions of Law A-50
Appendix A-6: Trial Court Judgment A-66
Appendix B-1: Treaty of Guadalupe Hidalgo A-90
Appendix B-2: Act of 1851 ..... A-108
Appendix C-1: Patent for Rancho La Ballona A-115
Appendix C-2: Plat of Rancho La Ballona A-124
Appendix D-1: March 17, 1860 Letter from General Land Office (Joseph Wilson, Commissioner) A-125
Appendix D-2: April 30, 1873 Letter from General Land Office (Willis Drummond, Commissioner) A-128

APPENDIX A-1

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

[L.A. No. 31422. May 10, 1982.]

CITY OF LOS ANGELES,
Plaintiff, Cross-defendant and Respondent,

v.

VENICE PENINSULA PROPERTIES
et al., Defendants,
Cross-defendants and Appellants;
THE STATE OF CALIFORNIA
ex rel.
STATE LANDS COMMISSION,
Defendant, Cross-complainant and Respondent.

OPINION

MOSK, J.— In a series of recent cases, this court has considered the scope and effect of the public trust doctrine. Under that doctrine, the state holds a trust interest on behalf of the public in tidelands (*City of Berkeley* v. *Superior Court* (1980) 26 Cal.3d 515 [162 Cal.Rptr. 327, 606 P.2d 362]) and in lands between high and low water in nontidal navigable lakes (*State of California* v. *Superior Court* (*Lyon*) (1981) 29 Cal.3d 210 [172 Cal.Rptr. 696, 625 P.2d 239]; *State of California* v. *Superior Court* (*Fogerty*) (1981) 29 Cal.3d 240 [172 Cal.Rptr. 713, 625 P.2d 256]). The public may use such properties for purposes such as commerce, navigation, and fishing, as well as for environmental and recreational purposes. These lands may be conveyed to private persons only to promote trust uses, and grants not made for that purpose remain subject to the rights of the public. (For a scholarly analysis of the development of the public trust in the United States and in California, see Stevens, *The Public Trust* (1980) 14 U.C. Davis L.Rev. 195, 199 et seq.)

The foregoing cases involved property which was originally owned in fee by the state or federal government and granted by them to private persons. In the present case, the issue is whether the public trust doctrine applies to tidelands in which the state and federal government never had fee title. The tidelands involved here were originally acquired by private persons from the Mexican government prior to the time California was ceded to the United States under the Treaty of Guadalupe Hidalgo, and later patented to the owners by the federal government in accordance with the requirements of the treaty.

Ballona Lagoon, the subject of this proceeding, is an arm of the Pacific Ocean in the Marina del Rey area of Los Angeles. It is subject to the tides, and inundated with seawater at mean low tide and mean high tide. At mean high tide, the depth of the water is sufficient to be navigable by shallow draft vehicles. At its northern end, the lagoon is connected to the Venice Canals, and provides the sole source of water for them.

In 1905, the shore surrounding the lagoon was subdivided into three large abutting tracts, and some of the tidelands were filled and improved. The present case involves two of those tracts, lot R of the Silver Strand subdivision and a portion of lot C of the Del Rey subdivision, both of which consist entirely of waterways. Access to the lagoon is now provided by walkways surrounding the shore, public streets to the shoreline, and bridges across the lagoon. In recent years, motor-controlled tide gates were installed between the Pacific Ocean and the entrance to the lagoon to control the ebb and flow of the tide within the lagoon; they are used to prevent flooding of the adjacent land.

The City of Los Angeles desired to dredge the lagoon, construct sea walls, and make other improvements therein without exercising its power of eminent domain. It filed an action for declaratory relief and to quiet title in the lagoon against the owners of lots C and R, and the holder of an easement in these

lots (hereinafter called defendants).[1] The complaint alleged that the public owns an easement in the lagoon for commerce, navigation and fishing, for the passage of fresh water to the Venice Canals, and for water recreation. It alleged also that the lots had been dedicated by their owners for public use. The city joined the State of California as a defendant in the action, as contemplated by section 6308 of the Public Resources Code.[2] The state thereafter filed a cross-complaint, alleging that it had acquired an interest in the tidelands of the lagoon for commerce, navigaton and fishing upon admission to the Union, that it held this interest in trust on behalf of the public, and had granted its interest to the city. (For literary convenience, the city and the state will be referred to collectively as plaintiffs.)

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[1] Some of the defendants originally named in the action sold their interests in the lots to the present owners. Summa Corporation is the owner of the portion of lot C involved in this case; Venice Peninsula Properties and other defendants own lot R.

Southern California Gas Company, sued as a fictitious defendant, owns an easement for a pipeline which traverses the lagoon, and maintains an underground storage area on lot C which may extend beneath the waters of the lagoon. Its interest in this proceeding appears somewhat attenuated. The company sought a declaration that plaintiffs would be required to pay it compensation if relocation of the pipeline is required by the improvements which the city proposed to construct. However, there is no indication that these improvements will affect the company's easements; plaintiffs' briefs imply to the contrary. In any event, plaintiffs concede, as they must, that they will be required to compensate the company in the event any improvements they may make at some future time damage the company's facilities. (Pub. Resources Code, § 6312.)

Although the trial court found that the public's right is "paramount" to the rights of the gas company, we do not understand this finding to mean that, contrary to section 6312, the improvements constructed by the gas company may be taken without payment of compensation.

[2] Section 6308 provides: "Whenever an action or proceeding is commenced by or against a county, city, or other political subdivision or agency of the State involving the title to or the boundaries of tidelands or submerged lands that have been or may hereafter be granted to it in trust by the Legislature, the State of California shall be joined as a necessary party defendant in such action or proceeding...."

After a trial at which both documentary and testimonial evidence was received, the trial court determined that the state holds in trust for the people the easements claimed in the city's complaint, and that the state or its successors have the right to construct the improvements in the lagoon without exercising the power of eminent domain.[3] The court found also that defendants had dedicated the property as public streets or waterways.

Before discussing the primary issue of whether the tidelands trust applies to lands granted by Mexico and later patented to the owners by the federal government, we must consider defendants' claim that the trust doctrine does not apply to their property. They assert that the United States government determined as a fact in the course of the proceedings which culminated in the issuance of a patent to their predecessors in interest that the property in question was not tidelands, and this determination, right or wrong, cannot now be challenged by plaintiffs.

In order to decide this issue, we must examine the circumstances of the original grant and the subsequent patenting process.

In 1839, while California was a part of Mexico, the Constitutional Governor of California granted to Augustin and Ignacio Machado and Filipe and Tomas Talamantes a property known

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[3] In 1917, the state granted to the City of Venice any right which it had in tidelands within the boundaries of the city, in trust. The granting statute stated, "nothing contained herein shall in any way affect any property held or claimed under, through or from a Mexican grant or patent therefor within the present boundaries and jurisdiction of said city...." (Stats. 1917, ch. 77, p. 89.) The City of Los Angeles succeeded to the rights of Venice in these tidelands under a grant which excepted "any property held under, through or from a Mexican grant or patent...." (Stats. 1945, ch. 1513, p. 2826.) There is no indication as to why these exceptions were made. The critical question in this proceeding is whether the public has retained an interest in the property in question. Whether that interest is held by the city, or by the state (as the trial court concluded), has no significant effect on the public's rights in the property if such rights exist.

as Rancho Ballona. The rancho's western border was the Pacific Ocean, and it included lots C and R. After the war with Mexico was concluded by the Treaty of Guadalupe Hidalgo, California was ceded to the United States. Under the terms of the treaty, the rights of Mexican citizens to their property were to be "inviolably respected." (Treaty of Guadalupe Hidalgo, Feb. 2, 1838 [sic], Art. VIII, 3 West's Cal. Const. (1954) 727, 732.)

In keeping with this obligation, in 1851 the federal governmental passed "An Act to ascertain and settle the private Land Claims in the State of California" (hereinafter referred to as the Act of 1851), the purpose being to establish a method by which the claims to land granted by Mexico could be confirmed and settled in the grantees by the federal government. (9 Stat. 631.)

The Machados and Talamantes, following the procedure set forth in the act, petitioned the Board of Land Commissioners in 1852 for a decree confirming their title to the rancho. After a hearing, the board confirmed the title, describing the boundaries of the rancho in the same terms as the original Mexican grant. That decision was affirmed by the United States District Court in 1855.

However, before a patent could issue, a survey of the property was required, approved by the Surveyor General of California. (9 Stat. 633, § 13.) In 1858, Henry Hancock conducted a survey and prepared a plat which showed a large body of water labelled "inner bay" extending from the southwest corner of the property parallel to the Pacific Ocean in a northwesterly direction. Hancock's field notes set forth his measurements as he walked along the shores of the bay, crossed an inlet, and came to the Pacific Ocean.

For reasons which are not entirely clear from the record, the correctness of the survey was not determined until 17 years later. In 1869, objections to the survey were filed by owners of the ranch which bordered Rancho Ballona on the north, an area some distance from that marked "inner bay" on the Hancock survey. Under a statute passed in 1864 to expedite the settlement of land titles in California (13 Stat. 332), the Hancock survey was forwarded to Washington to the General Land

Office Commissioner, who was required to approve it prior to the issuance of the patent, and to settle conflicting claims to the lands surveyed. Commissioner Willis Drummond decided that the survey was accurate with regard to the disputed northern boundary. He determined also that the "inner bay" shown on Hancock's map was not an arm of the sea, basing this determination in part on three affidavits which stated that the area labelled "inner bay" on the plat was dry land used for pasturage, except at times of overflow at high water and during storms, when sand blocked the mouth of a creek which, on Hancock's plat, emptied into the "inner bay." However, Drummond approved the Hancock survey.

Thereafter, a patent was issued. It not only incorporated the plat prepared by Hancock, but his field notes as well. The grant was for "the tract of land embraced and described in the.... Survey...." Defendants base their claim that the patent proceedings determined conclusively that the "inner bay" was not tidelands, upon the finding of Drummond.

The parties are in disagreement as to what was finally decided in the patent proceeding[4] and whether the determination as to the character of the "inner bay" was necessary to the approval of the survey.[5] For the purpose of analyzing the effect of the patent we assume, without deciding, that defendants

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[4] The owners of the ranch north of the Rancho Ballona appealed Drummond's decision to the Secretary of the Interior; in affirming, the secretary referred specifically only to the boundary line dispute. From this circumstance, plaintiffs urge that Drummond's decision is not binding because it was an intermediate decision affirmed by higher authority only to the extent that it decided the boundary dispute.

[5] Plaintiffs claim that the question whether the "inner bay" shown on Hancock's map was an arm of the sea was not necessary to Drummond's decision because only the placement of the northern boundary was challenged; even if all the boundaries of the ranch were in issue, they argue, the question whether the "inner bay" was land or water was irrelevant to those boundaries. Defendants contend, on the other hand, that the area described as the "inner bay" would have been excluded from the grant if it had consisted of tidelands.

prevail on these matters and that Drummond's determination that the "inner bay" was not an arm of the sea was a final decision on that question and a necessary predicate to the issuance of the patent.

But these assumptions do not end the matter. The four corners of the patent, when considered in light of Drummond's finding, present an obvious ambiguity. The plat attached to the patent shows an "inner bay," and Hancock's field notes, repeated therein, describe his measurements around this bay. The principal definition of a "bay" is "an inlet of the sea, usually smaller than a gulf, but of the same general character. . . ." (Webster's New Internat. Dict. (2d ed. 1951) p. 234). Drummond had the power to investigate the correctness of the survey or to order that a new one be made (13 Stat. 332, 333). Instead, he approved it without requiring any changes even though it was inconsistent with his determination regarding the character of the "inner bay."

In view of this inconsistency between the terms of the patent and the opinion of Drummond, the trial court was justified in admitting evidence as to whether the area in question was an arm of the sea and tidelands at the time California was admitted to the Union in 1850. The court found as a fact that for more than 900 years the lagoon has been an arm of the sea, subject to the tides. This conclusion is supported by overwhelming evidence, and defendants do not seriously challenge its validity.[6]

We come, then, to the primary issue before us, i.e., whether defendants' property is subject to the public trust. Under the Act of 1851, all land in California, including tidelands, which

[6] Experts in the field of geology and geomorphology testified that the Ballona Lagoon is the remnant of a larger, wider, and deeper tidal body of water which existed in 1839 and for more than 900 years prior thereto. Their conclusions were based in part on surveys of the area by the federal government in 1876, 1887, and 1896, which showed the lagoon as an arm of the sea in a configuration consistent with the map drawn by Hancock, and scientific tests of the subsurface of the lagoon.

had belonged to Mexico and was not patented to private parties, became the property of the United States. (9 Stat. 631, §13, p. 633.) The federal government held the interest in tidelands in trust for the future state, and when California was admitted to the Union, it succeeded to the rights of the United States as an incident of sovereignty. (*City of Berkeley* v. *Superior Court, supra,* 26 Cal.3d 515, 521.)

Defendants urge that the tidelands trust is an incident of title, that the federal government never acquired title to tidelands granted by Mexico to private parties and confirmed by patents issued by the United States, and that it follows, therefore, that the state, upon admission to the Union in 1850, could not succeed to an interest which the federal government never possessed.[7] Plaintiffs concede that defendants have title to the tidelands, but they assert that the federal government acquired an interest in trust in such lands on behalf of the public when California was ceded by Mexico, that this interest did not pass with the patent issued to defendants' predecessors, and that the state acquired it as an incident of sovereignty in 1850.

In analyzing these conflicting claims, we must decide, first, whether the title which defendants' predecessors received from Mexico was subject to the rights of the public in the tidelands encompassed in the grant and, second, if so, whether the United States acquired these rights upon annexation of California.

The law of Mexico at the time of cession declared that the public had a right to the use of the tidelands; this right was similar to the common law public trust.[8] In the grant of the

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[7] California did not acquire *title* as an incident of sovereignty to tidelands which were patented under the Act of 1851. (E.g., *United States* v. *Coronado Beach Co.* (1921) 255 U.S. 472, 488 [65 L.Ed. 736, 742, 41 S.Ct. 378]; *People* v. *San Francisco* (1888) 75 Cal. 388, 398 [17 P. 522].)

[8] Law III of Title XXVIII of Las Siete Partidas, the law in effect while California was a part of Mexico, provided, "The things which belong in common to the creatures of this world are the following, namely, the . . . sea and its shores, for every living creature can use each of these things according as it has need of them. For this reason every man can use the sea and its shore for fishing or for

Rancho Ballona to the Machados and Talamantes, it was provided that the grantees "may enclose it without prejudice to the traversing roads and servitudes." An expert on the law of Mexico who testified on behalf of defendants stated that the purpose of this language was to preserve "the rights of the public . . . in the conveyance of large tracts of land by the authorities." [9] Thus, when California was ceded by Mexico, the title of defendants' predecessors was subject to the interests of the public in the tidelands included in the grant.

Next, we consider whether the United States acquired that interest upon annexation of California. There is little authority regarding this issue. As we have seen under section 13 of the Act of 1851, lands which had belonged to Mexico and were not patented by the federal government to private parties became the property of the United States. This provision does not state whether less than fee interests retained by Mexico in land conveyed by that government, such as the public interest in tidelands, also passed to the new government.

So far as we have been able to determine, only one case has addressed that question. Under Mexican law, a grant of land by the government did not include mineral rights. In *Moore* v. *Smaw* (1861) 17 Cal. 199, the court was called upon to decide, inter alia, whether the United States became the owner of the mineral rights in California lands granted by Mexico to private

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navigation, and for doing everything there which he thinks may be to his advantage." Law VI provided, "Rivers, harbors, and public highways belong to all persons in common. . . ." (Las Siete Partidas, CCH (Spain) (1931) pp. 820-821). The Mexican law originated in 13th century Spain under Alfonso the Wise. (Stevens, *The Public Trust, supra,* 14 U.C. Davis L.Rev. at p. 197.)

[9] Indeed, according to the expert witness, Mexican law prohibited the alienation of tidelands. While we are not aware of any authority on the question whether a conveyance of tidelands by Mexico (perhaps erroneously) preserved the public's right in the land, the concept of retention by the public of rights in lands conveyed by the government to private parties was not alien to the law of Mexico, as we shall see. In the absence of any indication to the contrary, we assume that tidelands conveyed by Mexico remained subject to the public's interest.

parties. It held that under the provisions of the Act of 1851, the mineral rights retained by the Mexican government were "by the cession passed, with all other property of Mexico within the limits of California, to the United States." (17 Cal. at p. 217.)

The same reasoning should apply to tidelands. The interest of the Mexican government in these lands, like mineral rights, was "property of Mexico," at the time of cession and therefore became the property of the United States. In view of the public's strong interest in tidelands, the established doctrine that title in such lands in the hands of private persons is usually subject to the rights of the public, and the rule that statutes conveying tidelands should be interpreted if reasonably possible to avoid a destruction of the public use (*People* v. *California Fish Co.* (1913) 166 Cal. 576, 597 [138 P. 79]), we hold that under the Act of 1851, the federal government succeeded to Mexico's right in the tidelands granted to defendants' predecessors upon annexation of California.

We reject defendants' assertion that the tidelands trust is inevitably an incident of fee title by the government. It is true, as they claim, that prior cases have described the trust in the context of tidelands which the government owns or owned at one time.[10] However, these cases do not hold that title in the government is essential to the existence of the trust. So far as we are aware, this is the first case which has squarely presented that question.[11]

Thus far, we have decided that upon annexation of California, the federal government succeeded to the ownership

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[10] For example, in *People* v. *California Fish Co., supra*, 166 Cal. 576, 584, tidelands are referred to as belonging to the state in its sovereign character, and in *Illinois Central Railroad* v. *Illinois* (1892) 146 U.S. 387, 452 [36 L.Ed. 1018, 1042, 13 S.Ct. 110], the government's interest in tidelands is described as "a title held in trust for the people of the state. . . ."

[11] We disapprove dictum in *San Deigo County Archeological Society, Inc.* v. *Compadres* (1978) 81 Cal.App.3d 923, 927 [146 Cal.Rptr. 786], to the effect that the public trust doctrine applies only to property to which the state has at one time held title.

of the public's rights in the tidelands contained in ranchos which had been conveyed by Mexico. The next question is whether those rights were relinquished by issuance of the patents to the Mexican grantees. The major disagreement between the parties arises over the effect of the patent on the tidelands. Defendants insist that the failure of the United States to reserve the public's right when it issued the patent to their predecessors bars plaintiffs from now asserting such rights. Plaintiffs counter—and the trial court found—that, while the questions of title and boundaries were conclusively decided upon issuance of the patent, whether the title was subject to the rights of the public was not an issue in the patent proceedings.

Although early cases of the United States Supreme Court relied upon by defendants declared that the deed granted by the United States pursuant to the Act of 1851 was a "quitclaim, or rather . . . a conveyance of such interest as the United States possessed in the land," (*Beard* v. *Federy* (1866) 70 U.S. (3 Wall.) 478, 491 [18 L.Ed. 88, 92]; *Adam* v. *Norris* (1880) 103 U.S. 591, 593 [26 L.Ed. 583, 584]), this view was later rejected by the high court. In *Boquillas Cattle Co.* v. *Curtis* (1909) 213 U.S. 339, 344 [53 L.Ed. 822, 825, 29 S.Ct. 493], it was held that a patent from the federal government was a "confirmation in a strict sense" of the interest received from Mexico. In the course of its opinion, the court observed, "It is not to be understood that when the United States executes a document on the footing of an earlier grant by a former sovereign it intends or purports to enlarge the grant." (213 U.S. at p. 344 [53 L.Ed. at p. 825].)[12]

Moore v. *Smaw, supra,* 17 Cal. 199, decided many years before *Boquillas,* appears at first blush to support defendants' assertion that any rights acquired by the federal government upon cession in lands conveyed by Mexico to private parties were granted by the patent. However, when the reasons for the

[12] In *Boquillas,* the plaintiff, who had received a grant of land from the State of Sonora, claimed that a patent to the land issued under a law similar to the Act of 1851 carried with it a preference to take water as a riparian landowner.

holding of *Moore* are analyzed, its effect is to support the position of plaintiffs.

As we have seen, *Moore* held that under the Act of 1851, the United States acquired ownership of minerals in lands which had been conveyed by Mexico to private parties because under Mexican law that government retained the ownership of the minerals. The question facing the court in *Moore* was whether the patent of the federal government, which reserved no interest in the minerals, granted that interest to the landowners. The court concluded that the grant included the mineral rights. It reasoned that California did not succeed to the interest of Mexico upon statehood since ownership of mineral rights was not an incident of sovereignty. Therefore, the federal government held that interest in the same capacity as a private landowner and, since a grant of land by an individual without reservation of mineral rights passed ownership of such rights to the grantee, the same rule should apply to conveyances of the government. The court went on to state that patents of the United State since the Revolution had uniformly been regarded as transferring all the interest which the government could possess in the soil, even when the grant was a confirmation of one made by a prior government.

Thus, although *Moore* held that the federal patent enlarged the property rights of Mexican grantees, the reason for its conclusion was that mineral rights are not an incident of sovereignty and, therefore, a patent by the United States which failed to reserve that right conveyed fee title to the grantee. The clear implication of this holding is that if sovereign rights to property had been involved the court's conclusion would have been otherwise. Tidelands are not held by the government in its proprietary capacity; they are held in trust for the benefit of the public, may not be alienated at will, and unlike lands containing mines, when tidelands are conveyed into private hands they ordinarily remain subject to the public interest even though the grant is purportedly in fee. (See, e.g., *Carver* v. *San Pedro, L.A. & S.L.R. Co.* (S.D.Cal. 1906) 151 F. 334, 337; *People* v. *California Fish Co., supra,* 166 Cal. 576, 593.) In the absence of convincing authority to the contrary, therefore, we may not presume that

the patent issued to defendants' predecessors included the interest in the tidelands which the United States government had acquired from Mexico.

Defendants cite numerous cases which they claim stand for the proposition that the patents issued under the Act of 1851 passed all interest of the federal government to the grantee, and that the state did not acquire any interest in the tidelands included in Mexican grants as an incident of sovereignty upon admission to the Union. These authorities establish that a federal patent determined conclusively that the grantee had title to the land described therein, and that this interest prevailed over later claims of ownership by private parties or the government. (E.g., *Knight* v. *U.S. Land Association* (1891) 142 U.S. 161, 184 [35 L.Ed. 974, 982, 12 S.Ct. 258]; *San Francisco* v. *LeRoy* (1891) 138 U.S. 656, 670-671 [34 L.Ed. 1096, 1101, 11 S.Ct. 364]; *Beard* v. *Federy, supra,* 70 U.S. 478, 492 [18 L.Ed. 88, 92-93]; *People* v. *San Francisco, supra,* 75 Cal 388, 398; *Teschemacher* v. *Thompson* (1861) 18 Cal. 11, 26.) Moreover, the fact that the land described in the patent included tidelands did not diminish its conclusive effect. (*United States* v. *Coronado Beach Company* (1921) 255 U.S. 472, 487-488 [65 L.Ed. 736, 741-742, 41 S.Ct. 378].)

Defendants rely heavily on the case last cited. In the *Coronado Beach* case, the United States desired to construct military facilities on an island in San Diego Bay, which included tidelands. The owner derived title from a Mexican grant, and the patent issued pursuant to the Act of 1851 included the tidelands within the boundaries described therein. The high court held that the owner of the island had title to the tidelands and the federal government was required to pay compensation for their taking. In the course of its opinion, the court determined that the question whether there was a grant of the tidelands and boundaries of the grant had been decided in the confirmation proceedings, that California never had title to the tidelands by virtue of its sovereignty because they had been included in the Mexican grant and confirmed in the

patentees, and that the grantees' title could not be collaterally attacked by the federal government.[13]

This case, like the others relied upon by defendants, involves the question whether the title or boundaries of patented lands originating in Mexican grants may be collaterally attacked. In the present case plaintiffs concede that defendants have title to lots C and R; they claim, as did the state in our prior tidelands decisions, that the title of the landowners is subject to the rights of the public.

One case cited by defendants, in addition to *Moore*, considered the question whether a right in property other than title was included in a patent issued to a landowner who derived title from Mexico. In *United States* v. *Title Ins. Co.* (1924) 265 U.S. 472 [68 L.Ed. 1110, 44 S.Ct. 621], the court held that Indians who had the perpetual right to occupy certain lands under Mexican law, did not retain that right in lands patented to private parties under the Act of 1851 because of their failure to assert it in the patent proceeding.[14]

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[13] The United States argued that the tidelands belonged to California, which had aquired title to them upon its admission to the Union. Rejecting this argument, the court stated, "But the title of the State was subject to prior Mexican grants. The question whether there was such a prior grant and what were its boundaries were questions that had to be decided in the proceedings for confirmation and there was jurisdiction to decide them as well if the decision was wrong as if it was right. The title of California was in abeyance until those issues were determined as the decree related back to the date of the original grant. . . . [A]lthough . . . the grant could have been construed more narrowly, that was a matter to be passed upon and when the decree and the patent went in favor of the grantee it is too late to argue that they are not conclusive against the United States. . . .[H]owever arrived at it was adopted by the United States for its grant and it cannot now be collaterally impeached." (255 U.S. at pp. 487-488 [65 L.Ed. at pp. 741-742].)

[14] The court reasoned in part that "a claim of a right to permanent occupancy of land is one of far reaching effect, and it could not well be said that lands which were burdened with a right of permanent occupancy were a part of the public domain and subject to the full disposal of the United States. . . . Surely a claimant would have little reason for presenting to the land commission his claim of land, and securing a confirmation of that claim, if the only result

We do not find this case to be convincing authority. The right to occupy land is a normal incident of title, and we have no quarrel with the proposition that private persons who failed to assert their right to occupancy in the patent proceedings may not thereafter claim that right. But the right to exclude the public from tidelands is not a normal incident of title. To the contrary, as we have seen, conveyance of such lands by the government does not ordinarily free them from the burden of the public trust even though no reservation is made in the deed for the preservation of the people's interest.

It follows from what we have said that the federal government retained an interest in the tidelands in question when it issued the patent to defendants' predecessors, and that this interest was acquired by California upon its admission to statehood.

Our conclusion is supported not only by authority, but by policy as well. According to amicus curiae, California Land Title Association, most of the land along the Pacific Coast from San Diego to Sonoma is situated in former Mexican ranchos. We do not know how much of the tidelands contained in these ranchos was conveyed by Mexico to private parties. If these areas of tidelands are free of the public interest, there is no right in the federal government, the state, or its successors, to improve or to use them for trust purposes without pursuing condemnation proceedings.

The result would be a California Mason-Dixon coastline dramatically divided between the north, in which the public trust doctrine is respected, and the south, where it is unrecognized. A dual system of rights would be created. Grantees whose title derives from Mexican grants would enjoy title free of the public trust, whereas those whose title did not originate with Mexico would hold their land subject to the trust. The Treaty of Guadalupe Hidalgo requires only that the rights of Mexican

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were to transfer the naked fee to him, burdened by an Indian right of permanent occupancy." (265 U.S. at p. 484 [65 L.Ed. at pp. 1113-1114].)

grantees in their property shall be equal to that of citizens of the United States. (Treaty of Guadalupe Hidalgo, Art. VIII, 3 West's Cal. Const. (1954) 727, 732.) In view of this language, there is no justification for holding that a deed from the United States to its own citizens conveys lesser rights than a deed issued to grantees from Mexico, or that the public trust exists in tidelands north of Sonoma but not south of that point as to tidelands included in former Mexican ranchos.

In view of our conclusion, we need not discuss the trial court's findings that the public holds an easement in the property of defendants for the passage of fresh water to the Venice Canals and for water recreation, and that defendants' predecessors had dedicated the property for use as public streets or waterways. All these uses are included within the public trust. (*Marks* v. *Whitney* (1971) 6 Cal.3d 251, 259-260 [98 Cal.Rptr. 790, 491 P.2d 374].)[15]

We have examined other contentions made by the parties and find them to be without merit.

The judgment is affirmed.

Bird, C. J., Newman, J., and Broussard, J., concurred.

RICHARDSON, J.—I respectfully dissent.

In my view, the majority seriously errs in at least two respects, either of which independently is wholly sufficient to invalidate its reasoning and result. First, it extends the so-called "public trust doctrine," contrary to its fundamental rationale, to nonnavigable, nontidal waters on private property in which neither the state nor the federal government ever has asserted any title or interest. Second, it disregards the well established conclusive effect of the federal patent upon the

[15] Our opinion is not to be understood as deciding matters which are raised by the parties but are not necessary to the determination of the issue before us. For example, although the state alleged in its cross-complaint that portions of the Ballona Lagoon which have been filled are still subject to the public trust, that issue is not involved in the present proceeding, since the property here consists entirely of tidelands.

subject property under the Act of 1851. I think the majority is wrong on both counts.

Along the way the majority cavalierly overturns a century-old judicial determination that the premises in question did *not* consist of tidal navigable waters. Disregarding the earlier federal court finding of fact the majority now, more than 100 years later, substitutes its own retroactive "finding" that the subject property was, indeed, then covered by tidal navigable waters. Resting upon its self-created factual premise, the majority attempts to justify *both* its disavowal of the federal patent of 1873 which had established the private ownership and nonnavigable character of the land in question *and* its use of the public trust doctrine, which heretofore had applied only to navigable waters previously owned by public entities. These conclusions, like their common premise, are flawed.

The subject real property consists of two parcels underlying what is popularly referred to as the Ballona Lagoon located in the Marina Del Rey area of Los Angeles. Historically, the lagoon was part of Rancho Ballona. Much of the area of the original lagoon is now dry land as a result of natural and developmental filling. In its present configuration the lagoon consists of a narrow elongated area covered by very shallow water described as "brackish," and separated from the ocean by a strand or sand barrier. There is a substantial question as to whether sea water presently flows through the lagoon in any significant amount. The majority concedes that the lagoon is seldom navigable, and then only by "shallow draft vehicles." (*Ante,* p. 292.)

I emphasize, however, that the current status of the lagoon has—or should have—little legal relevance to a proper resolution of the issues before us. In my view, our decision was foreordained over 100 years ago when it was *finally and judicially determined as a matter of fact* that Ballona Lagoon was not then an "arm of the sea" but rather belonged, along with the rest of Rancho Ballona of which it was a part, to its then Mexican grantees.

Historically, Rancho Ballona was a part of Mexico. In 1839 the Mexican Governor of California granted the rancho, including the lagoon, to Augustin and Ignacio Machado and Filipe and Tomas Talamantes. On July 7, 1846, following the Mexican War and upon completion of the military occupation of California, the then American military commander, Commodore Sloat, promised that Mexican land titles would be recognized by the United States. This policy was formalized in 1848, when California was ceded by Mexico to the United States, in the Treaty of Guadalupe Hidalgo. In that treaty the United States solemnly committed itself to respect the rights and property of Mexican citizens in newly ceded California. This covenant to protect previously established Mexican property rights affected all forms of ownership, and for over 100 years it has been judicially recognized both by the United States Supreme Court (*Knight* v. *U.S. Land Association* (1891) 142 U.S. 161, 184-185 [35 L.Ed. 974, 982, 12 S.Ct. 258]; *Beard* v. *Federy* (1865) 70 U.S. (3 Wall.) 478, 490 [18 L.Ed. 88, 92] and by us (*Teschemacher* v. *Thompson* (1861) 18 Cal. 11, 22). Indeed, the majority acknowledges that "under the terms of the treaty, the rights of Mexican citizens to their property was [*sic*] to be 'inviolably respected.' " (*Ante*, p. 294.)

Consistent with these treaty obligations, the United States Congress enacted the Act of 1851 (the Act) which established procedures to be administered by a Board of Land Commissioners to confirm these rights. Under the Act, persons asserting ownership of California land through Mexican grants were required to submit their claims to the board, which was given broad powers to adjudicate the claims pursuant to the treaty, the laws of Mexico and the decisions of the United States Supreme Court. Upon board approval of the claim, the property was surveyed by the United States Surveyor General and a patent thereupon issued using the survey description.

The Act further mandated that, once issued, the United States patent was to be binding and conclusive as to all persons save and except "third parties"—that is those who had an earlier title recognized under Mexican law. Because any such superior title had to exist prior to 1846 when the land was ceded

to the United States, and because the State of California did not itself then exist, it has been consistently held both by the United States Supreme Court and by us that the "third parties" excepted under the Act did not include the state. (*Knight* v. *U.S. Land Association, supra*, 142 U.S. at pp. 185-186 [35 L.Ed. at pp. 982-983]; *People* v. *San Francisco* (1888) 75 Cal. 388, 403 [17 P. 522].)

In comformity with the Act, the 1839 Mexican grant of Rancho Ballona to the Machados and the Talamantes was formally confirmed by the Board of Land Commissioners in 1854, and affirmed on appeal by the United States District Court in 1855. Thereafter, the subject property was in litigation before the General Land Office for 18 years, the principal issue being the precise westerly boundary of the rancho, and particularly whether the "inner bay" (Ballona Lagoon) was within the rancho or part of the Pacific Ocean. The General Land Office, the duty of which was to "settle conflicting claims to the land surveyed," concluded that the "inner bay" (Ballona Lagoon) was *not* an arm of the sea but rather was "dry land used for pasturage" except during storms and times of overflow. Based upon the foregoing, a *United States patent on Rancho Ballona was finally issued in 1873 to the predecessors in interest of the present property owners.* The description used in the patent included the lagoon. The majority opinion assumes "without deciding" that the above factual determination as to the character of the lagoon "was a final decision on that question and a necessary predicate to the issuance of the patent." (*Ante*, p. 295.)

From the foregoing chronology, I conclude that the Rancho Ballona has been owned privately since 1839. The Mexican grant to the Machados and Talamantes, confirmed by the Board of Land Commissioners in 1854, affirmed by the United States District Court in 1855, approved by the Surveyor General of the United States in 1858, and having fully ripened into a United States patent in 1873, vested full legal title in fee simple absolute in the present owners' predecessors. In my view, this title has been free and clear of any right, title or interest of the State of California or any of its political subdivisions from that day to this.

It is significant that the private ownership of the lagoon was uniformly accepted for almost 100 years. In 1965, however, the City of Los Angeles, subsequently joined by the State of California, filed the present litigation which seeks both declaratory relief and quiet title. Los Angeles attempts, for the first time, to establish a public trust easement for "commerce, navigation and fishing" over the lagoon on a theory that the lagoon is tideland and navigable ocean water. Alternatively, plaintiffs allege an express or implied public easement over the lagoon. While now conceding, frankly, that defendants presently hold the fee simple title to the lots in question, plaintiffs argue that these lots, along with the entire lagoon, are burdened by a public trust easement.

It is obvious that much more is involved in this litigation than the title to two lots. By imposing a public trust easement upon properties which are neither tidal, navigable, nor formerly under public dominion, the majority has removed all heretofore recognized reasonable limitations on the scope of the public trust doctrine. What is left? While the majority refrains from defining the extent of the easement beyond the land under the water of the lagoon, the implications of its decision equally threaten large areas held in private ownership elsewhere in the coastal areas of this state. The private title to such property, and the right to use it, suddenly are clouded by the creation of a state-administered easement even though the state heretofore has neither owned such property nor asserted any interest in it.

There is no precedent for such an extension of public ownership. The Legislature has never reached so far, nor have we. In *City of Berkeley* v. *Superior Court* (1980) 26 Cal.3d 515 [162 Cal.Rptr. 327, 606 P.2d 362], a bare majority of this court first expounded the notion that *tidelands in navigable waters which had been conveyed by the state* to private parties nonetheless were encumbered by a reserved public trust for commerce, navigation, fishing and other uses. (*Id.*, at pp. 523, 528.) In the following year in *State of California* v. *Superior Court* (*Lyon*) (1981) 29 Cal. 3d 210 [172 Cal.Rptr. 696, 625 P.2d 239], the same majority extended this new doctrine to lands between high and low

water in *nontidal navigable lakes which had been granted by the state* into private ownership.

It should be carefully noted that the rationale of the public trust doctrine is that *public* lands conveyed into private ownership remain subject to public use for certain limited purposes unless the intention to extinguish that public right is clearly expressed in the grant. The doctrine operates when the ownership of land and waters vested in California upon its admission to the Union (*Borax, Ltd.* v. *Los Angeles* (1935) 296 U.S. 10, 15 [80 L.Ed. 9, 14, 56 S.Ct. 23]) is thereafter conveyed into private hands, the doctrine reserving in the public grantor a public trust. In short, the principle limits *subsequently created* private property rights. (*People* v. *California Fish Co.* (1913) 166 Cal. 576, 583-585 [138 P. 79].)

It seems to me obvious that this reasoning has no application to lands like those before us which *never* were owned publicly. Indeed, the majority freely acknowledges that we have never before applied the public trust doctrine to such property. (*Ante*, p. 298.) Nonetheless, my colleagues assert, without analysis, that prior government ownership is not essential to the application of that doctrine, but that unadorned, unsupported, bore conclusory assertion is not presuasive. In my view the majority thus errs in applying the public trust doctrine to the property before us, title to which has been exclusively in private ownership since 1839.

The second major error of the majority lies in its failure to acknowledge the binding effect of the federal patent issued to the predecessors in title of the present owners. After the lapse of a century, it reopens a factual issue conclusively resolved long ago in the federal proceedings. Citing no authority and without other justification, it thus endorses a collateral attack in the trial court upon the general judgment pursuant to which the patent was issued. It approves the superior court's reweighing of the evidence presented to the land commissioner in the federal proceedings 100 years earlier. It also accepts the superior court's belated "finding," based upon claimed inconsistencies in that evidence, that Ballona Lagoon *was* an "arm of

the sea, subject to the tides." (*Ante*, p. 296.) Accordingly, the majority now concludes that the federal patent of 109 years ago was improperly issued.

Such a collateral attack upon the federal patent is highly improper. The purpose of the proceedings leading to the patent and the effect of its issuance was to *settle* permanently all claims which were, or which could have been, raised in those proceedings. Over 120 years ago in describing a patent we observed "Upon all matters of fact and law essential to authorize its issuance, it imports absolute verity. . . ." (*Leese v. Clark* (1861) 18 Cal. 535, 572.) Among the factual issues resolved in the 1873 patent proceedings were the boundaries and the character of the property which was granted by Mexico to its nationals, and particularly whether the lagoon was an "arm of the sea" or was included in the grant. The United States District Court decided it was the latter.

It is well established that the interpretation of a federal land conveyance is determined by federal law. (*Shively* v. *Bowlby* (1894) 152 U.S. 1, 9-10 [38 L.Ed. 331, 335, 14 S.Ct. 548].) This includes federal patents on real property, a portion of which is tidelands. (*Borax, Ltd.* v. *Los Angeles, supra*, 296 U.S. at p. 22 [80 L.Ed. at pp. 17-18].) As previously noted, the Ballona patent was issued by the United States government, pursuant to an act of Congress. This congressional action was ordained by the commitments made by our national government in a treaty between the United States and Mexico. It is *federal not state* law that governs the interpretations of the patent before us.

The Act of 1851, pursuant to which the federal patent issued, contemplated not only the definition but also the *settlement* of titles. (*Knight* v. *U. S. Land Association, supra*, 142 U.S. at p. 184 [35 L.Ed. at p. 982]; *Beard* v. *Federy, supra*, 70 U.S. at p. 489 [18 L.Ed. at pp. 91-92]; *United States* v. *Coronado Beach Co.* (1921) 255 U.S. 472, 487-488 [65 L.Ed. 736, 741-742, 41 S.Ct. 378].) This was equally so whether the subject property was upland or tideland. As Mr. Justice Field sagely observed in his concurring opinion in *Knight*: "Mexico owned the tidelands as well as the uplands, and it was, of course, in her power to make such disposition of

them in the establishment and organization of her pueblos [and ranchos] as she may have judged expedient. *And whether she did make such disposition by her laws was a matter exclusively for the United States to ascertain and determine.*" (142 U.S., at pp. 201-202 [35 L.Ed. at p. 988], italics added.)

The federal judgment which found that the lagoon was non-tidal cannot be ignored, now, 100 years later, by a state court determination that it was then "tidal." Nor should the majority attempt to vacate a solemn federal conveyance recorded also over 100 years ago, thereby brushing aside both the federal judgment and conveyance and creating a sort of floating "tidal title" in order to extend the "public trust" doctrine to the subject property.

My colleagues insist that "when California was ceded by Mexico, the title of defendants' predecessors was subject to the interests of the public in the tidelands included in the grant." (*Ante*, p. 297.) The majority cites no cases whatever, Mexican, Spanish or American, federal or state, which have so held. In granting this property to the Machados and the Talamantes in 1839 Mexico may have had the power to reserve whatever interest it chose. The point is that there is no evidence whatever that it did limit or condition its grant. Moreover, the record before us is equally devoid of support for the novel proposition that *all* Mexican grants to private parties 140 years ago were subject to such an uncodified, Mexican or Spanish, "common law public trust." By its "recognition" of a reserved Mexican public interest 140 years after the fact, the majority retroactively imposes upon 19th Century Mexican jurisprudence a remedy never asserted by Mexico.

Serious adverse practical consequences flow from the majority's reasoning. In creating an implied "reservation" by Mexico of public rights in lands which it had granted to its nationals prior to the cession of California to the United States, the majority circumvents the clear import of section 13 of the federal Act of 1851. Under that section the United States acquired as its property *only* "lands which had belonged to

Mexico and [which] were *not* patented by the federal government to private parties . . . . " (*Ante,* p. 296, italics added.) But the subject property here obviously *had* been patented to private parties. How, then, does the majority justify its assertion that "less than fee interests were retained by Mexico" and excepted from the Mexican grant of 1839 to the Machados and Talamantes, and somehow thereafter passed to the United States with the cession of California in 1846?

The majority seeks support for its theory of an implied reservation of public rights in patented lands by analogy to our decision in *Moore* v. *Smaw* (1861) 17 Cal. 199. Because we held in *Moore* that there were "mineral rights *retained* by the Mexican government" when it granted lands to its nationals subsequently passed to the United States on cession, it is urged that public rights in tidelands were similarly retained. (*Ante,* p. 296, italics added.) What my colleagues fail or refuse to note, however, is a very basic distinction between *Moore* and the present case. In *Moore* we stressed that at the time of the Mexican grant to the private *Moore* grantees "it was the established doctrine of the Mexican law that all mines of gold and silver in the country, though found in the lands of private individuals, were the property of the nation. No interest in the minerals passed by a grant from the Government of the land in which they were contained, without express words designating them . . . . The Mexican law on this subject was derived from the Spanish law . . . . Under Spain, the mines constituted the property of the crown, as part of the royal patrimony." (17 Cal. at pp. 212-213.) Not so in our case. At the time of the Mexican grant to defendants' predecessors in title, *no similar doctrine* traditionally established that such land grants were subject to a reservation of any "public trust rights."

In the absence of some legal authority or a factual determination of such reservation by Mexico, *Moore* provides absolutely no support for the majority's inventive concept that public trust rights were somehow silently "reserved" by Mexico when it conveyed the premises into private ownership in 1839; were then quietly passed to the United States upon cession; thereafter, without either notice or acknowledgement were handed to

California upon its admission to the Union; survived the subsequent issuance of a patent by the United States; lay dormant for over 100 years, and then, warmed by 143 summers, like a juridical century plant sprang suddenly into life and full bloom in 1982.

Of even more significance, however, in *Moore* we destroyed the conceptual underpinnings of the majority's thesis. In carefully explaning the function of a federal patent, we there held that the patent *extinguished every interest* of the United States—*including the mineral rights* which we there concluded *had* passed to the federal government under established Mexican law pertaining to such rights. (*Moore, supra,* 17 Cal. at pp. 223-226.) We insisted that "The object of the act [of 1851] is to 'ascertain and settle' private land claims in California. This object is declared in the first section. It is not merely to ascertain but *'to settle' the claims;* that is, to establish them—to perfect them by *placing them, so far as the Government is concerned, beyond controversy." (Id.,* at p. 223, italics added.)

Thus, with due deference to my colleagues, I suggest that even if there was substance to the majority's view that certain "public rights" were reserved by Mexico after its grant of 1839 to defendants' predecessors and that such rights somehow passed to the federal government, in *Moore* we flatly rejected the notion that any such rights could survive the patent process. Our language was unambiguous and explicit: "There is nothing in the act [of 1851] restricting the operation of the patents thus issued to the interests acquired by claimants from the former Government, or distinguishing the patents in any respect from the general class of conveyances made . . . by the United States. *To all claimants alike, whose claims have been finally confirmed, patents are to issue without words of reservation or limitation. . . ." (Id.,* at p. 224, italics added.) The title and interest which the patentee receives, we described as: *"all the interest of the United States, whatever it may have been,* in everything connected with the soil, in everything forming any portion of its bed or fixed to its surface, in everything which is embraced within the signification of the term land. . . ." (*Ibid.,* italics added.) Thus, all interests, including mineral rights of the United States, were

there held confirmed in the patentee upon issuance of the federal patent. It follows that if the federal patent absorbed and passed to the grantees even those rights which Mexico had historically reserved to itself, a fortiori, it would pass to the patentee any rights which Mexico neither expressly reserved nor historically, in its law, had asserted.

The fact, of course, that both our language and conclusions in *Moore* are venerable and that Californians have lived with them for over 100 years does not prove them wrong. Federal patents today remain the firm and stable bedrock of much of California's land titles. I conclude that the patentees to the property before us received *all* of the interests of the United States, including any inchoate public trust rights which knowingly or otherwise the United States may have received from Mexico upon the cession of California to the United States. Those interests vested in defendants' predecessors in title when their patent was properly confirmed in the federal patent proceedings.

The foregoing principles of land title law have been well established in California for a long, long time. Thus, 123 years ago, and 8 years after adoption of the Act and before the issuance of the present patent, we said *"The patent,* which is the final document issued by the government, *is conclusive evidence of the validity of the original grant,* and of its recognition and confirmation, and of the survey, and its conformity with the confirmation, *and of the relinquishment to the patentee of all the interest of the United States in the land. It cannot be attacked collaterally, even for fraud. . . ."* (*Moore* v. *Wilkinson* (1859) 13 Cal. 478, 487, italics added.) We have consistently, and from the beginning, given this same effect to a patent. (*Teschemacher* v. *Thompson, supra,* 18 Cal. 11, 26-28; *Morrill* v. *Chapman* (1868) 35 Cal. 85, 88; *Miller* v. *Dale* (1872) 44 Cal. 562, 578; *Chipley* v. *Farris* (1873) 45 Cal. 527, 538-539; *Cassidy* v. *Carr* (1874) 48 Cal. 339, 344; *People* v. *San Franciso, supra,* 75 Cal. 388, 397.)

The United States Supreme Court has been equally consistent. Over a century ago it characterized as follows the effect of a patent and the nature of the conveyance confirmed thereby:

"[T]he patent is a record of the action of the government upon the title of the claimant as it existed upon the acquisition of the country.... When informed, by the action of its tribunals and officers, that a claim asserted is valid and entitled to recognition, the government acts, and issues its patent to the claimant. This instrument is, therefore, record evidence of the action of the government upon the title of the claimant. By it the government declares that the claim asserted was valid under the laws of Mexico; that it was entitled to recognition and protection by the stipulations of the treaty, and might have been located under the former government, and is correctly located now, so as to embrace the premises as they are surveyed and described. *As against the government this record, so long as it remains unvacated, is conclusive. And it is equally conclusive against parties claiming under the government by title subsequent. It is in this effect of the patent as a record of the government that its security and protection chiefly lie.*" (*Beard* v. *Federy, supra,* 70 U.S. at pp. 491-492 [18 L.Ed. at pp. 92-93], italics added; accord *Dominguez De Guyer* v. *Banning* (1897) 167 U.S. 723, 740-744 [42 L.Ed. 340, 345-347, affirming *De Guyer* v. *Banning* (1891) 91 Cal. 400, 402-404 [27 P. 761]; *Thompson* v. *Los Angeles Farming & M. Co.* (1901) 180 U.S. 72, 77-80 [45 L.Ed. 432, 434-436, 21 S.Ct. 289].)

In *United States* v. *Coronado Beach Co., supra,* 255 U.S. 472, the Supreme Court held that the owner of realty, including tidelands, which was acquired by a Mexican grant and subsequently confirmed in federal patent proceedings, could not be deprived of its property without just compensation. The high court specifically emphasized that California never acquired title to the tidelands by virtue of its sovereignty because the property had been included in the Mexican grant, and having been confirmed in the patent proceedings, such title could not be collaterally attacked. (*Id.,* at p. 488 [65 L.Ed. at p. 742].) The same analysis, applicable here, compels a similar legal conclusion.

I find singularly unpersuasive the majority's attempt to distinguish cases such as *United States* v. *Title Ins. Co.* (1924) 265 U.S. 472 [68 L.Ed. 1110, 44 S.Ct. 621], wherein the Supreme Court concluded that the perpetual right of Indians under

Mexican law to use and occupy certain lands was lost when those lands were granted to Mexican nationals whose title was subsequently confirmed in the patent process. Finding that the "right to occupy land is a normal incident of title," the majority correctly concludes that such right must be asserted in the patent process or is lost. (*Ante*, p. 302.) With respect to the public right to use tidelands, however, the majority concludes otherwise. Offering no rationale for any such distinction, the majority simply declares, *ipse dixit*, that such a public interest *need not* be asserted in order to survive the federal patent process *because* the "conveyance of such lands by the government does not ordinarily free them from the burden of the public trust. . . ." (*Ante*, p. 302.) Such reasoning is, of course, circular, is sustained by no authority, and cannot be reconciled with our own long established holding that "*all* the interest of the United States, *whatever* it may have been" passes to the patentee upon issuance of a patent under the Act of 1851. (*Moore* v. *Smaw*, *supra*, 17 Cal. at p. 224, italics added.)

From all of the foregoing, I conclude that the subject property was owned by the government of Mexico until 1839, at which time it passed into private ownership. The State of California at that time, of course, did not exist. Assuming, for discussion purposes, that any "public interest" in such property had been retained by Mexico, such interest thereafter inevitably passed to the United States upon cession by Mexico. Surely, the interest could not have been retained by Mexico after cession. Pursuant to appropriate congressional authorization, the federal government subsequently entertained claims, public and private, to lands within California which formerly were conveyed by the Mexican government into private ownership. The property in question was subjected to these appropriate proceedings. As noted, the claims of defendants' predecessors in title were considered and affirmed in a valid judgment of the United States District Court which applied the binding federal law, the property was surveyed, the boundaries litigated, and finally in 1873 a United States patent was properly issued to defendants' predecessors. Both the United States and the State of California had ample opportunity in those proceedings to

assert any "public trust" interests that they might claim. They did not do so. To me, the record eloquently reflects that for over a century none of the parties harbored the notion that the rancho lands in question contained any lingering "trust" encumbrance. No case, federal or state, American or Mexican, has ever so held before today.

The detailed procedure established by Congress in its Act of 1851 was a forthright, direct and common sense method for resolving title. It is relevant to note that the title confirmatory proceedings were designed to resolve not some but *all* conflicting and disputed interests.

In the words of the high court: "[T]he purpose of the Act of 1851 was to give repose to titles as well as to fulfill treaty obligations, and . . . it not only permitted but required all claims to be presented to the commission, and barred all from future assertion which were not presented within the two years." (*United States* v. *Title Ins. Co., supra,* 265 U.S. at p. 483 [68 L.Ed. at p. 1113].) All claims not so presented were "regarded as abandoned." (*Ibid.*). The high tribunal in that case expressed an interpretive principle which has equal application here: " 'Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change. Legislatures may alter or change their laws, without injury, as they affect the future only; but where courts vacillate and overrule their own decisions on the construction of statutes affecting the title to real property, their decisions are retrospective and may affect titles purchased on the faith of their stability. Doubtful questions on subjects of this nature, when once decided, should be considered no longer doubtful or subject to change.' " (*Id.,* at pp. 486-487 [68 L.Ed. at p. 1114].)

The majority, however, purports to discover and by a judicial nudge to waken from its 109-year slumber a dormant public interest of the State of California in the lands in question. It does so at the expense of the constitutionally protected property rights of defendants.

I confess to a growing unease about what I view as an accelerating erosion of private property rights of California citizens. We need look no further than the first section of the very first article of the state Constitution to learn that the sovereign people of California have proclaimed: "All people are by nature free and independent and have *inalienable rights.* Among these are enjoying and defending life and liberty, *acquiring, possessing, and protecting property,* and pursuing and obtaining safety, happiness, and privacy." (Italics added.) From this solemn pronouncement of the people, identifying the protection of their property with the defense of their lives and liberty and describing such interests as "inalienable," I conclude that preserving the sanctity of a citizen's private property is a singular responsibility of government and its courts. When, therefore, that government itself seeks to trench on such constitutionally protected and "inalienable rights" of its own people, its conduct must be closely scrutinized and its reach carefully measured by the rule of law.

If the State of California or the City of Los Angeles seeks to "dredge the lagoon, construct sea walls" and otherwise now assert public dominion over the subject property and if either can demonstrate some valid public use, let it frankly, fairly and openly exercise its eminent domain power. Pursuant to the Fifth Amendment to the federal Constitution and article I, section 19 of the California Constitution, let state and city pursue established legal procedures to condemn the property in question, rather than upset long established principles in order to obtain the property "on the cheap," as it were. In compliance with the constitutional restrictions which are binding upon them, if the state and city now seek the use of the subject property, they should pay for it.

I would reverse the judgment.

KAUS, J.—I respectfully dissent.

As I read the applicable federal decisions, the dispositive issue in this case—namely, whether defendants' title to property deriving from a federal patent is subject to an overriding state "tidelands trust"—is a matter of federal, not state,

law. (See, e.g., *State Land Board v. Corvallis Sand & Gravel Co.* (1977) 429 U.S. 363, 375 [50 L.Ed.2d 550, 561, 97 S.Ct. 582]; *Knight v. U.S. Land Association* (1891) 142 U.S. 161 [35 L.Ed. 974, 12 S.Ct. 258].) In discussing California's interest in tidelands, *every* United States Supreme Court decision to which our attention has been directed draws a clear distinction between tidelands that passed to the state as sovereign, and tidelands—like those involved in the present case—that had been ceded by Mexico to private parties and whose title was later confirmed by a federal patent pursuant to the elaborate procedures adopted by the federal government to comply with the Treaty of Guadalupe Hidalgo. These decisions uniformly hold that whereas California obtained a sovereign interest in the former category of tidelands under the general common law public trust doctrine, "[t]here is the established qualification that this principle is not applicable to lands which had previously been granted by Mexico to other parties...." (*Borax, Ltd.* v. *Los Angeles* (1935) 296 U.S. 10, 15-16 [80 L.Ed. 9, 14, 56 S.Ct. 23]; *United States* v. *Coronado Beach Co.* (1921) 255 U.S. 472, 487-488 [65 L.Ed. 736, 741-742, 41 S.Ct. 378]; *Shively* v. *Bowlby* (1894) 152 U.S. 1, 30-31 [38 L.Ed. 331, 342-343, 14 S.Ct. 548]; *Knight* v. *U.S. Land Association, supra,* 142 U.S. 161, 183-184 [35 L.Ed. 974, 981-982]; *San Francisco* v. *LeRoy* (1891) 138 U.S. 656, 670-671 [34 L.Ed. 1096, 1101, 11 S.Ct. 364].)

In my view, the majority gives an artificially narrow reading to these numerous federal decisions in suggesting that the cases are limited to the question of whether California obtained "title" to the tidelands and that they do not bear on the question of whether California acquired an allegedly independent "tidelands trust" interest in this property. As I understand the governing federal tidelands cases, the special "public trust" which adheres in tidelands—and which operates to limit the legislative prerogative in determining to what uses such lands may be put—flows directly from the initial sovereign ownership of these tidelands. (See *Illinois Central Railroad Co.* v. *State of Illinois* (1892) 146 U.S. 387, 452-454 [36 L.Ed. 1018, 1042-1043, 13 S.Ct. 110]; *Martin* v. *Waddell* (1842) 41 U.S. (16 Pet.) 367, 409-414 [10 L.Ed. 997, 1012-1014]; cf. *People* v.

California Fish Co. (1913) 166 Cal. 576, 584-587 [138 P. 79]; *City of Berkeley* v. *Superior Court* (1980) 26 Cal.3d 515, 521-525 [162 Cal.Rptr. 327, 606 P.2d 362]; *State of California* v. *Superior Court (Lyon)* (1981) 29 Cal.3d 210, 226-231 [172 Cal.Rptr. 696, 625 P.2d 239].) Thus, if—as a matter of federal law—California never owned these tidelands in trust for the public, the keystone on which the application of the public trust doctrine rests is missing.[1]

It should be understood, of course, that even in the absence of the public trust doctrine, state and local governments retain broad power to regulate the property in question for environmental, navigational, and recreational purposes and the like. Although this broad regulatory power may not afford the City of Los Angeles authority to enter on and alter defendants' property without compensation, this extensive legislative control does suggest to me that the majority's concern over the problems ostensibly emanating from a "Mason-Dixon coastline" is probably overstated. In any event, the policy considerations which might legitimately influence our decision if this were a matter of state law, clearly cannot override the governing United States Supreme Court decisions on a matter of federal law. Because I find the majority's conclusion inconsistent with those decisions, I dissent.[2]

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[1] I find nothing in the federal cases that would support the conclusion that when the United States issued a federal patent confirming private interests in property acquired pursuant to an earlier grant from Mexico, the federal government—as a matter of federal law—retained a hidden "tidelands trust" interest which later passed to California. (See, e.g., *Knight* v. *U.S. Land Association, supra,* 142 U.S. at pp. 185-189 [35 L.Ed. at pp. 982-984]; *Beard* v. *Federy* (1866) 70 U.S. (3 Wall.) 478, 491 [18 L.Ed. 88, 92].)

[2] Because the majority opinion upholds the trial court's decision on the public trust theory, it does not reach that court's alternative findings that past usage of the property at issue gave rise to a public easement for the passage of fresh water and a dedication for use as public streets or waterways. Since my feelings about these alternative holdings would not affect the outcome of the case in any event, I express no view as to the validity of those conclusions.

APPENDIX A-2

CLERK'S OFFICE, SUPREME COURT
4250 State Building
San Francisco, California 94102

June 16, 1982

I have this day filed Order

REHEARING DENIED

In re: L. A. No. 31422
CITY OF L. A.

vs.

VENICE PENINSULA PROP., et al.
(and related case)

Respectfully,

Clerk

APPENDIX A-3

IN THE
SUPREME COURT OF THE
STATE OF CALIFORNIA

L.A. No. 31422

CITY OF LOS ANGELES,
Plaintiff, Cross-defendant and Respondent,

vs.

VENICE PENINSULA PROPERTIES, *et al.*,
Defendants, Cross-defendants and Appellants;
THE STATE OF CALIFORNIA *ex rel.*
STATE LANDS COMMISSION,
Defendant, Cross-complainant and Respondent.

Appeal
COUNTY LOS ANGELES
Superior Court
No. C-868223

The above-entitled cause having been heretofore fully argued, and submitted, it is Ordered, Adjudged and Decreed by the Court that the judgment of the Superior Court of the County of Los Angeles in the above-entitled cause, is hereby afirmed.

Respondents to recover costs on appeal.

I, Laurence P. Gill, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above-entitled cause on the 10th day of May, 1982.

Witness my hand and the seal of the Court, this 17th day of June, 1982.

LAURENCE P. GILL
Clerk

By /s/ R. NICCO
Deputy

APPENDIX A-4

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

The CITY OF LOS ANGELES, a
Municipal Corporation, Plaintiff
and Respondent,

v.

VENICE PENINSULA PROPERTIES,
Defendant and Appellant.

The STATE of California, Acting By and Through
the STATE LANDS COMMISSION,
Cross-Complainant and Respondent,

v.

SOUTHERN CALIFORNIA GAS COMPANY;
Summa Corporation, Cross-Defendants and Appellants.

Civ. 56383.

COMPTON, Associate Justice.

At issue on this appeal is whether, by virtue of the so-called California Tidelands Trust Doctrine, the State of California (State) and its successor in interest, the City of Los Angeles (City) can assert an easement for commerce, navigation and fishery over land which was part of a Mexican land grant and patented by the United States government pursuant to the Act of 1851.[1] We hold that neither the State nor the City possess such an easement over the property in question here.

[1] The Act of 1851 was enacted by Congress to implement the treaty of Guadalupe Hidalgo, by which treaty the government of Mexico ceded to the United States the area which now constitutes the State of California. The Act of 1851 established a mechanism for settling the claims of Mexican citizens to land within the ceded territory.

The instant case involves two lots which are depicted on a subdivision map as Lot C of the Del Rey subdivision, and Lot R of the Silver Strand subdivision. These lots underlie what is now popularly referred to as the Ballona Lagoon (Lagoon) located in the Marina Del Rey area of the City.

The Lagoon in its present configuration is a narrow elongated area covered by very shallow water and is separated from the ocean by a strand or bar of beach sand. Its entire length lies within 1,000 yards of the ocean. It connects to the Venice Canals[2] to the northwest and to the ocean channel entrance to Marina Del Rey on the southeast.

Historically, the name Ballona Lagoon referred to a much larger area than that covered by the property here involved and was part of what was once Rancho Ballona. That additional area is now dry land as a result of filling and development and natural conditions.

Rancho Ballona was granted to Augustin and Ignacio Machado and Philipe and Tomas Talamantes in 1839 by the then Governor of the Californias, which area was part of Mexico. Following the cession of California to the United States by Mexico, the United States in 1873 patented the title of the Machados and Talamantes to Rancho Ballona pursuant to the Act of 1851.

The Summa Corporation, Venice Peninsula Properties, and other individuals (hereafter the property owners) are the present fee owners of Lots C and R and derive their title from the original Mexican grantees. The Southern California Gas Company owns a recorded easement for two pipelines which traverse the property.

The first attempt to establish a public easement over the property did not occur until 1965, when the City filed the instant action for declaratory relief and to quiet title. By virtue

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[2] The Venice Canals were part of an unrelated early subdivision and were designed to provide waterway frontage and access to the lots in the subdivision. The property in question here is not part of that subdivision.

of said easement, the City asserts the right to dredge, construct sea walls, and to make improvements in the Lagoon without the necessity of exercising the power of eminent domain. These proposed improvements would require relocation of the Southern California Gas Company pipelines.

According to the City's complaint, it is entitled to a public trust easement for commerce, navigation and fishery for the reason that the Lagoon is part of the tidelands and is navigable ocean water. As a fallback position, the City also claimed an easement based on express or implied dedication.

The State of California was named as a defendant pursuant to Public Resources Code section 6308 which requires that the state be joined as a necessary party defendant whenever a City brings an action involving tidelands that have been granted to it in trust by the Legislature.

The State filed a cross-complaint for declaratory relief and to quiet title in itself. In reality, however, the interests of the City and the State are compatible with each other and are not adverse. We will, for the sake of convenience, therefore, refer to these governmental entities as the State.

The trial court rendered a judgment for the State declaring (1) the existence of the public trust easement for navigation, commerce and fisheries in, over and upon the waters of the Lagoon up to the line of the Mean High Tide; (2) an easement for passage of fresh sea water through the Lagoon to the Venice Canals; (3) an easement for water recreation; (4) a right in the State and its successors and assigns to open, dredge, construct sea walls, etc., without requirement of the exercise of eminent domain or payment of compensation; (5) a paramount right in the State over the pipeline easement of the Southern California Gas Company; and (6) an easement in the City for public streets and waterways. In summary, however, it can be said that all of the enumerated rights and easements granted to the State by the trial court are simply incidental to and are subsumed by the public trust easement.

Since we conclude that there is no evidence in the record to support any theory of express or implied dedication, the resolution of this appeal turns on whether the State can assert the public trust easement for commerce, navigation and fishery.

In 1852, pursuant to the provisions of the Act of 1851, the Machados and the Talamantes petitioned the Board of Land Commissioners for confirmation of their title. The Board, after hearing, confirmed title in the petitioners in 1854. The Board's decision was affirmed by the United States District Court, and the decision became final in 1856.

The confirmation and patent process next called for a survey of the boundaries of the Rancho. By the time this survey was conducted, certain landmarks referred to in the original grant had disappeared.

Objections by adjoining Rancho owners to the results of the survey resulted in some 17 years of litigation. The litigation mainly concerned the northwestern borders of the grant which had been marked in the original grant by gullies or barrancas, and the southern boundary, which had as one of it landmarks, a low marshy area or creek (estero) which was described as opening into an inner bay.

During the litigation in the patent proceedings this inner bay was described by the Commissioner of the Land Office as not being an arm of the sea. Several witnesses, who testified concerning the boundaries of Rancho Ballona, described the inner bay as pasture land which was periodically flooded by fresh water overflow.

There is no question that the patent which was ultimately issued embraced within its boundaries the entire Lagoon. The westerly boundary of the Rancho was fixed at the high water mark on the westerly side of the sand bar or ridge which separates the present Lagoon from the ocean.

The State concedes that the property owners have valid fee title to Lots C and R, but that such title is subject to the public

trust easement because they were tidelands or submerged lands prior to the original grant.[3]

Although only Lots C and R are involved in the instant litigation, the State asserts that the entire Lagoon, as it existed at the time of the grant, was and still is subject to the public trust easement. Thus, according to the State, even those areas which are now dry land and developed would be so burdened.

For this reason, the California Land Title Association has appeared on appeal as amicus curiae in support of the property owners. That organization points out that there are a number of areas throughout the State, which are similar to the property in question here, on which title insurance has been issued in reliance on the inviolability of the Mexican land grant.

According to the property owners and amicus, if the State, at this late date, can assert a public trust easement over patented land, the result would be chaotic, especially as to land which has been developed without previous objection by the State.

The property owners concede that the federal regulatory power over navigable waters applies to patented Mexican grant land. The property owners also concede that under the Coastal Act, the State of California can regulate the use of such land by the owners. They contend, however, that the recognition of the existence of the public trust easement directly affects the title to such property and its exercise in the manner in which the State proposes here would render the naked fee title valueless and would amount to inverse condemnation.

The so-called Tidelands Public Trust Doctrine is a creature of United States and California law and is an incident of sovereign title in tideland property.

"Upon the acquisition of the territory from Mexico the United States acquired the title to tide lands equally with the

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[3] Tidelands are lands between the Mean High Tide and Mean Low Tide, whereas submerged lands are those seaward of the Mean Low Tide and not uncovered in the ordinary ebb and flow of the tide. (*City of Long Beach v. Mansell*, 3 Cal.3d 462, 91 Cal.Rptr. 23, 476 P.2d 423.)

title to upland; but with respect to the former they held it only in trust for the future States that might be erected out of such territory." (*Knight v. United Land Association,* 142 U.S. 161, at 183, 12 S.Ct. 258, at 263, 35 L.Ed. 974.)

Thus California acquired title to navigable waterways and tidelands by virtue of its sovereignty when admitted to the Union in 1850. (*Borax, Ltd. v. Los Angeles* (1935) 296 U.S. 10, 56 S.Ct. 23, 80 L.Ed. 9.) This exercise of sovereignty was as a trustee for the public rather than in a proprietary capacity. (*City of Long Beach v. Mansell, supra; People v. California Fish Co.* (1913) 166 Cal. 576, 138 P. 79; *People v. Kerber* (1908) 152 Cal. 731, 93 P. 878; *Ward v. Mulford* (1867) 32 Cal. 365.)

"The control of the State for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining." (*Illinois Central Railroad v. Illinois* (1892) 146 U.S. 387, at 453, 13 S.Ct. 110, at 118, 36 L.Ed. 1018; also see *United States v. Coronado Beach Co.,* 255 U.S. 472, 41 S.Ct. 378, 65 L.Ed. 736; *Whitney v. United States,* 181 U.S. 104, 21 S.Ct. 565, 45 L.Ed. 771; *United States v. Cambuston,* 61 U.S. (20 Howard) 59, 63, 15 L.Ed. 828.)

"As to tide-lands, although it may be stated as a general principle ... that the titles acquired by the United States to lands in California under tide-waters, from Mexico, were held in trust for the future State, so that their ownership and right of disposition passed to it upon its admission into the Union, that doctrine cannot apply to such lands as had been previously granted to other parties by the former government, or subjected to trusts which would require their disposition in some other way." (*San Francisco v. Le Roy* (1891) 138 U.S. 656, at pp. 670-671, 11 S.Ct. 364, at p. 368, 34 L.Ed. 1096.)

Our reading of the cases leads us to conclude that the public trust easement only exists over lands to which California acquired title by virtue of its sovereignty upon admission to the Union. California did not acquire such title to lands which were the subject of a prior Mexican land grant and later patented by

the United States government in accordance with its obligations under the treaty of Guadalupe Hidalgo.

The nature and effect of the patent issued pursuant to the Act of 1851 has been well described by both the United States and California Supreme Courts. The patent of the government is evidence of title and is conclusive against the government and all persons claiming under it. The patent is a deed of the United States and operates as a quit claim of any interest the United States may have reserved in the land. It establishes in the grantee full and *complete* title to the property. (*Beard v. Federy* (1865) 70 U.S. (3 Wall.) 478, 18 L.Ed 88; *Teschemacher v. Thompson* (1861) 18 Cal. 11.)

Further, there appears to be no question but that a federally patented Mexican land grant could embrace tidelands. The State concedes this and it has been so held in *United States v. Coronado Beach Co., supra,* and *San Francisco v. Le Roy, supra.*

In *United States v. Coronado Beach Co., supra,* we find language which in our opinion is controlling of the issue of whether the patented fee title is subject to an unreserved servitude, which exists only as an adjunct of sovereignty. That case involved land which had been granted by the Mexican government to one Carrillo and patented by the United States government to Carrillo. The grant covered a portion of North Island in San Diego County and included tidelands bounded seaward to the "anchorage for ships."

The United States, in attacking the validity of the patent as to tideland property, argued that, as here, California became a state prior to the date of the patent and thus its sovereignty over the land existed in spite of the later patent. The Supreme Court there declared that California's title, upon becoming a state, was subject to prior Mexican land grants and that California title was held in abeyance pending determination of the validity and boundaries of the Mexican grant in proceedings established by the Act of 1851.

Further, the United States in that case, challenged the boundaries of the grant insofar as it embraced tidelands. The Supreme Court's answer to that contention was that in the

confirmation proceedings there was jurisdiction to decide the issues, right or wrong, and ". . . however arrived at [the decision] was adopted by the United States for its grant and it cannot now be collaterally impeached." (*United States v. Coronado Beach Co., supra,* (1921) 255 U.S. 472, at 488, 41 S.Ct 378, at 379, 65 L.Ed 736.)

It must be emphasized that in the confirmation and patent proceedings under the Act of 1851, the United States was always a party and in a position to assert any interest it claimed to have in the property including any easement claimed by virtue of sovereignty. This is especially significant in the case at bench because the character of the land was, itself, an issue in the confirmation proceedings and was at that point determined not to be tidelands. Thus it was error for the trial court here to permit evidence to be introduced to controvert that determination.

In *United States v. Title Ins. Co.* (1924) 265 U.S. 472, 44 S.Ct. 621, 68 L.Ed. 1110, the Supreme Court of the United States dealt with the claims of certain Indians to the right to occupy land which was the subject of a federally patented Mexican land grant. The Indians' right to occupancy was said to have existed under Mexican law and it was contended that it survived or continued after the patenting process, even though no such reservation was mentioned in the patent.

The Supreme Court, relying on its former decision in *Barker v. Harvey* (1901) 181 U.S. 481, 21 S.Ct. 690, 45 L.Ed. 963, rejected the claim and held that any such right of occupancy would have had to have been asserted in the patenting process. The court at page 492, 21 S.Ct. at page 694 stated "[A] claimant would have little reason for presenting to the land commission his claim to land, and securing a confirmation of that claim, if the only result was to transfer the naked fee to him, burdened by an Indian right of permanent occupancy."

The above cited cases are a complete answer to the State's argument here that only the fee title was settled by the patent process and that the public trust easement exists independent of that patent process. It is difficult for us to see how the patent

can be described as settling in the grantee a full and *complete* title, while at the same time holding that it was burdened by a servitude of the magnitude of that asserted by the State in this action.

Inasmuch as California never acquired sovereign title to land which was the subject of a prior grant by the Mexican government, the public trust easement, which is an adjunct of sovereignty and a creature of United States and California law, never arose.

The State, by way of a corollary argument, contends that under Mexican law the tidelands could not be subject to private ownership. Thus it argues that there existed under Mexican law a doctrine similar to the California Tidelands Trust Doctrine and that by virtue of that doctrine, the public trust easement passed to the United States upon cession of California by the government by Mexico.

We need not here discuss the Mexican law because any contention that Mexican law is controlling of the scope and effect of the United States patenting process has been laid to rest by decisions of the United States and California Supreme Courts.

In the case of *Moore v. Smaw* (1861) 17 Cal. 199, the United States sought to claim mineral rights in land which was part of a Mexican land grant patented by the United States under the Act of 1851. The argument there was that under Mexican law, mineral rights did not pass to the grantee but instead remained with the government. The California Supreme Court rejected that argument by declaring that there was nothing in the Act of 1851 which restricted the operation of the patents to the interest acquired by claimants from the former government. The court held that all the interest of the United States, whatever it may have been, and everything connected with the soil or any portion of it, or everything lying over it or under it, was conveyed to the grantee by the United States in the patent process.

In *Thompson v. Los Angeles Farming & Milling Co.* (1901) 180 U.S. 72, 21 S.Ct. 289, 45 L.Ed. 432, an attempt was made to

invalidate a federal patent under the Act of 1851 by asserting that Mexican law, at the time of the grant, gave the Governor of California no authority to dispose of certain land in question. The contention was that the Mexican grant was, in effect, void and that the federal patent was likewise void. The Supreme Court in rejecting that argument stated it was the purpose of the Act of 1851 to give final and complete repose to titles. "It was enacted not only to fulfil our treaty obligations to individuals, but to settle and define what portion of the acquired territory was public domain . . . . Upon the confirmation of the claim by the commissioners or by the District or Supreme Court, a patent was to issue and be conclusive against the United States." (Pp. 77-78, 21 S.Ct. p. 291.)

The California Legislature has clearly recognized the highly protected status of the Mexican land grant — a status which inures from a treaty obligation of the United States — in its enactment by which the State's interest in the tidelands was conveyed to the City of Los Angeles, as a successor to the City of Venice.

Chapter 1513 of the Statutes of 1945, granted to the City of Los Angeles as successor to the City of Venice, *"all right, title and interest of the State of California* held by said State by virtue of its sovereignty in and to all the tidelands and submerged lands . . ." That statute, however, contained the following:

". . . excepting any property held under, through or from a Mexican grant or patent . . ."

Chapter 77 of the Statutes of 1917, which effected the original conveyance of the State's interest to the City of Venice similarly provided that ". . . nothing contained herein shall in any way affect any property held or claimed under, through or from a Mexican grant or patent therefor within the present boundaries and jurisdiction of said city . . ."

We conclude that the State does not have a public trust easement for commerce, fishing and navigation in the Lagoon, since it never had sovereign title to the property. That conclusion dictates that the judgment must be reversed since the record here is devoid of any evidence to support a finding of

express or implied dedication or any other basis for the various subordinate easements which the trial court attempted to create.

The evidence is quite clear that the Venice Canals are, and have been for a long period of time, stagnant polluted bodies of water receiving no sea water flow through the Lagoon. Inasmuch as the State, under our holding here, has no right to dredge or improve the flow through the Lagoon, an easement simply for sea water flow would be worthless.

As to claim that the public has obtained a prescriptive right to use the Lagoon for recreational purposes under the rationale of *Gion v. City of Santa Cruz* (1970) 2 Cal.3d 29, 84 Cal.Rptr. 162, 465 P.2d 50, we find that case to be inapplicable.

Contrary to the situation in *Gion*, the Lagoon here is neither a "beach or shoreline" nor a public road, nor as we have indicated, is it a part of navigable ocean waters. Further, there is no evidence of public use which even approximates the extent of the public use in *Gion*.

In the absence of an express dedication to public use, it must be presumed that no property owner in fact desires, without compensation, to dedicate his property to public use to the extent that he would lose, for all times, his right to make private use thereof.

Here it is undisputed that the property owners did not in fact intend to dedicate the property to public use. They posted "no trespass" signs as evidence of that lack of intent. In our opinion, they should not now be penalized simply because they did not erect an unsightly and forbidding fence manifesting a continuing hostility to even sporadic and limited public use. To imply an intent to dedicate, under these circumstances, would defy logic, ignore reality and stand equity on its head.

The judgment is reversed.

BEACH, J., concurs.

FLEMING, Acting Presiding Justice, dissenting.

In my opinion a public trust easement for navigation, commerce, and fishery has existed since 1839 and continues to exist

in the property identified as Ballona Lagoon, for the reason that throughout this period it has been tidewater property. A public trust easement attaches to all tidewater and tideland property, and the rule is the same under Mexican law (*Lux v. Haggin* (1886) 69 Cal. 255, 316, 317, 4 P. 919), United States law (*Illinois Central Rd. v. Illinois* (1892) 146 U.S. 387, 455-460, 13 S.Ct. 110, 115, 36 L.Ed. 1018), and California law (*City of Berkeley v. Superior Court* (1980) 26 Cal.3d 515, 521, 162 Cal.Rptr. 327, 605 P.2d 1328; *Marks v. Whitney* (1971) 6 Cal.3d 251, 259, 98 Cal.Rptr. 790, 491 P.2d 374).

Ballona Lagoon, a narrow inlet or estuary of the sea connected with and directly parallel to the sea, has been tidewater and tideland for the past 900 years. It was shown as the estuary of a larger "Inner Bay" on the original Hancock survey of Ballona rancho in 1858 and on the coastal surveys of 1876, 1887, and 1896. Subdivision of the surrounding land in 1905 did not change its character as tidewater property, which it remains to this day with waters controlled by motorized tide gates abutting the ocean channel leading to Marina Del Rey. Appellants make two arguments against the existence of a public trust easement: (1) Ballona Lagoon is not tidewater and tideland, (2) the fee title confirmed in their predecessors in interest by the federal Board of Land Commissioners and the United States General Land Office extinguished all public trust easements in the Ballona rancho grant.

1. According to appellants, the non-tidal character of Ballona Lagoon was conclusively established in 1873 in the General Land Office patent proceeding confirming their predecessors in interest's title to Ballona rancho, when Commissioner Drummond commented that the "Inner Bay" of Ballona rancho was not an arm of the sea but was largely pasturage. That comment, however, referred to a different area of the rancho, its "Inner Bay" located north and east of the estuary, an area removed from the sea and not directly adjoining it. In that same patent proceeding Commissioner Drummond specifically mentioned "an estuary of the sea in the Ballona rancho," which is the property involved here. Commissioner Drummond's comment about the "Inner Bay," made in the course of a title proceeding

to settle the northern and western boundaries of the Ballona rancho, merely considered the extent of tidewater penetration into the rancho as a factor in determining the rancho's boundaries. It cannot rationally be interpreted as a repudiation of the existence of the "estuary of the sea in the Ballona rancho" mentioned in another part of his report.

Other than the Drummond comment, appellants offer no proof of the non-tidal character of Ballona Lagoon. This is scarcely surprising, because the physical evidence is all the other way. Factually, the trial court's finding that the property is tidewater was supported by overwhelming proof, not the least of which was evidence of the presence of clams and the practice of clamming in Ballona Lagoon. Because the property was and is tidewater property, an easement for navigation, commerce, and fishery attaches.

2. Appellants further argue that whether Ballona Lagoon is tidewater or not, their full title to the property was conclusively determined by the General Land Office patent proceedings which confirmed title and boundaries of the original Mexican land grant in their predecessors in interest. But appellants' title is not contested. The disputed issue is whether a public trust easement in tidal property can exist when full title to a Mexican land grant has been confirmed in private ownership. Appellants assert that confirmation of the grant gave them title without limitation and reservation, relying on the case of *United States v. Coronado Beach Company* (1921) 255 U.S. 472, 41 S.Ct. 378, 65 L.Ed. 736. That case held that the Mexican grant at issue was bounded on the "west by the anchorage for ships" and therefore included title to adjacent tidelands. But the existence of a public trust easement in tidelands for navigation, commerce, and fishery was not an issue in the cause and was never discussed (see p. 484). I see nothing inconsistent in recognition of fee title in Mexican-land-grant tidal property and recognition of a public trust easement in the same property (*Lewis Blue Point Oyster Co. v. Briggs* (1913) 229 U.S. 82, 87, 88, 33 S.Ct. 679, 680, 681, 57 L.Ed. 1083; *People v. California Fish Co.* (1913) 166 Cal. 576, 586-587, 598, 138 P. 79.) At bench, the Ballona rancho

grant was specifically made "without prejudice ... to servitudes." Such a reservation, in my view, included a public trust easement in those portions of the grant which were tidal property, (*Illinois Central Railroad v. Illinois* (1892) 146 U.S. 387, 452-455, 13 S.Ct. 110, 117, 36 L.Ed. 1018; *Townsend v. Greeley* (1866) 72 U.S. (5 Wall.) 326, 335, 18 L.Ed. 547; *New Orleans v. United States* (1836) 35 U.S. (10 Peters) 662, 731, 9 L.Ed. 573), a reservation which the subsequent General Land Office proceeding confirming title and boundaries did not disturb. (Cf. *Fremont v. United States* (1854) 58 U.S. (17 How.) 542, 565, 15 L.Ed. 241.)

Appellants, joined by California Land Title Association as amicus curiae, conjure up the spectre that recognition of public trust easements in properties which were tidal at the time Mexico ceded California to the United States would disrupt a myriad of good titles to property which has since been filled and improved in reliance on the validity of a Mexican-land-grant fee title. But I forsee no parade of horribles resulting from recognition of public trust easements in Mexican-land-grant tidal property. The California Supreme Court effectively laid such hobgoblins to rest in *City of Berkeley v. Superior Court* (1980) 26 Cal.3d 515, 162 Cal.Rptr. 327, 605 P.2d 1328, a cause which involved state conveyances of tidelands to private ownership under a legislative act of 1870. The court there held a public trust easement for navigation, commerce, and fishery was reserved under such conveyances, that grantees of tidelands took their grants subject to such reservations. The court then went on to declare that tideland properties which have since been filled or reclaimed are free of the public trust easement to the extent they no longer comprise tidelands and are no longer adaptable to public trust uses. (pp. 534-535, 162 Cal.Rptr. 327, 605 P.2d 1328.) In effect, the court determined that long-continued occupation of tidelands by a fee owner, adverse to tideland use and accompanied by action which terminates the tidal character of the property, may also terminate the public trust easement for navigation, commerce, and fishery. While the court did not elaborate the exact nature of the legal principle involved, clearly it relied on the presence of factual

elements comparable to those which establish prescription, adverse possession, abandonment, or equitable estoppel. (Cf. *People v. California Fish Co.* (1913) 166 Cal. 576, 597, 138 P. 79; *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-497, 499, 91 Cal.Rptr. 23, 476 P.2d 423; see "The Tideland Trust," (1974) 21 UCLA L.Rev. 826, 838-842, 850.)

The foregoing principle applies equally here. Property which was tidal at the time of its original Mexican grant and at the time of its patent by the General Land Office remains subject to a public trust easement for navigation, commerce, and fishery. But if during the intervening years the property has lost its tidal character, even if the loss resulted from action of the fee owner in damming, filling, and improving the property, the public trust easement ordinarily disappears. The operation of this principle may be seen in the present cause, where a century ago the tideland area of Ballona was considerably more extensive that it is today. As to those parts of Ballona rancho which lost their tideland character, such as the "Inner Bay," the public trust easement disappeared; as to those parts of Ballona Lagoon which retain their character as tideland or tidewater, the public trust easement remains.

3. The trial court also found Ballona Lagoon subject to a variety of other easements—for passage of sea water to the Venice Canals, for public waterways, for recreational use, for boating, clamming, and swimming. Whether the evidence was sufficient to support the existence of these easements is a question I do not reach, since the parties agree that a decision in favor of the public trust easement makes unnecessary a determination of the validity of these subsidiary easements.

I would affirm the judgment below on the basis of a public trust easement in tidewater property.

APPENDIX A-5

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

THE CITY OF LOS ANGELES, a municipal corporation *Plaintiff,* vs. ETHEL FRASER CARMAN-RYLES, et al., *Defendants.*	No. 868,223 FINDINGS OF FACT AND CONCLUSIONS OF LAW (Pending Action — Department 23)

The above-entitled case came on regularly for trial commencing on February 18, 1975, before the Honorable Samuel Greenfield, Judge presiding in Department 23 of the above-entitled Court, without a jury. Burt Pines, City Attorney, Norman L. Roberts, Assistant City Attorney and Anthony P. Parrille, Deputy City Attorney, by Anthony P. Parrille, appeared for plaintiff and cross-defendant, the City of Los Angeles. Loren Miller, Jr., William A. Dorland and Jack D. Janofsky, by William A. Dorland, appeared for defendant and cross-defendant, Southern California Gas Company. Hill, Farrer and Burrill, William M. Bitting and Steven W. Bacon, by William M. Bitting and Steven W. Bacon, appeared for defendant and cross-defendant Summa Corporation (formerly known as "Hughes Tool Company.") Evelle J. Younger, Attorney General, Alan V. Hager and Jerold Krieger, Deputy Attorneys General, by Jerold Krieger, appeared for defendant and cross-complainant, the State of California. Pacht, Ross, Warne,

Bernhard and Sears, Inc., by Henry J. Shames and Paul Hamilton, appeared for defendant and cross-defendant, Venice Peninsula Properties. David J. Pierce of the law firm of Mitchell and Mitchell, appeared for defendants and cross-defendants, Ruth Jones-Wright, and Robert D. Byrne and Byrne C. Manson as Trustee under the Will of Olive Byrne Jones, deceased.

Pursuant to stipulation of the parties and good cause appearing therefor, on April 24, 1975, trial of the matter was ordered bifurcated. Thereafter, between April 24, 1975 and May 13, 1975, the Court heard the testimony and examined the proof offered by the parties pertaining to the first stage of the trial.

On November 18, 1975, the Clerk of the Court entered this Court's Notice of Intended Decision in the Minutes of the Court. The City of Los Angeles requested Findings of Fact and Conclusions of Law, and the Court ordered the defendant, Summa Corporation to prepare the Findings of Fact and Conclusions of Law at that time. On June 25, 1976, the Court vacated its Notice of Intended Decision filed on November 18, 1975 with respect to the first stage of the two bifurcated issues in the trial; and ordered the reopening of the first stage for the purpose of taking testimony as to the geographical boundaries of the easements claimed by the City and cross-complainant State in the "portion of Lot C of the Del Rey Beach Subdivision lying northwesterly of the Entrance Channel of Marina Del Rey." Thereafter, on August 23, 1976, September 27, 1976, and October 18, 1976, the Court heard additional testimony and examined the proofs offered by the parties pertaining to the remaining issues of the first stage of the trial.

On October 19, 1976, the Clerk of the Court entered the Court's Revised Notice of Intended Decision on Certain Factual Issues Tried In Connection With The First Stage Of The Bifurcated Trial in the Minutes of the Court. Under its Revised Notice of Intended Decision, the Court has ordered that counsel for the City and for the State jointly prepare, serve and lodge with the clerk in Department 23, proposed Findings of Fact and Conclusions of Law on the first stage of the Trial.

The Court being fully advised, now makes its Findings of Fact and Conclusions of Law, as follows:

FINDINGS OF FACT

It is true that:

1. The subject of this litigation commonly known as and hereafter referred to as the 'Ballona Lagoon' is an arm of the Pacific Ocean which was created by forces of nature over 900 years ago and has continued to exist at all times to the present. Since its creation, and to the present, it has been subject to the tides of the Pacific Ocean and inundated with seawaters at mean low-tide and mean high-tide. The waters within the Ballona Lagoon, at mean high-tide, are of sufficient depth to be navigated by rowboats, canoes, surfboards and other shallow-draft craft. Ballona Lagoon is therefore a navigable body of water. Ballona Lagoon may be made more usable for navigation and commerce purposes, including the navigation and mooring of sailboats and motor-cruisers.

2. Since 1873 and at various times thereafter, construction work, including dredging and building of seawalls and dikes in and about the Ballona Lagoon has been commenced and carried on. The permanent construction of facilities within the confines of the Ballona Lagoon as depicted on Exhibit 14, occurred southerly of the portions in litigation herein. Persons or entities constructed such facilities in and about the Ballona Lagoon in a manner that tidal influence within the Ballona Lagoon was protected and sustained. Construction work completed within territory surrounding the Ballona Lagoon or upon the banks of the Ballona Lagoon (referring to the portion of the Lagoon in litigation herein) did not substantially affect the size, shape, depth, location or character of the Lagoon.

3. The ebb and flow of the tides within the Ballona Lagoon are preserved and protected by the installation and operation of automatic, motor-controlled tidegates which are installed in the northerly bank of the Marina del Rey Entrance Channel (the southerly boundary of the property which is the subject of this litigation.) Waters of the Pacific Ocean enter the Lagoon by and

through the Marina del Rey Entrance Channel. Said tidegates are operated in such a manner as to limit the maximum amount of tidal water entering the Lagoon at highest high-tide, to prevent the flooding of areas adjacent to the Ballona Lagoon.

4. The waters of the Ballona Lagoon are a habitat for a variety of marine life, including several varieties of clams and shrimp. Clams obtained from the Lagoon are edible and have been and are still being taken for both private consumption and commercial use. The waters of the Ballona Lagoon also provide a habitat for migratory birds.

5. The Ballona Lagoon and the waters of the Ballona Lagoon are of scenic value to the community and enhance the aesthetics and value of adjacent properties. The Ballona Lagoon has value for scientific study and research as an estuarine area of ecological value. Properties adjacent or near the Lagoon have value and usefulness in excess of those separated from the Lagoon by distance.

6. Formerly the waters of the Ballona Lagoon were utilized as the means of disposing and flushing of brine and other waste products from oil-well operations conducted within the vicinity of the Lagoon. Brine was discharged into the Lagoon at ebbtide and flushed into the waters of the Pacific Ocean. That use of the Ballona Lagoon has been discontinued.

7. Lot C of Del Rey Beach Subdivision as recorded in Book 6, page 186 of Maps in the Office of the Recorder of Los Angeles County and Lot R of Silver Strand Subdivision as recorded in Book 7, page 86 of Maps, in the Office of the County Recorder of Los Angeles County, originated from a grant of Mexican land by the Governor of California in 1839 and thereafter confirmed by decree of the United States District Court pursuant to statutes enacted to implement the Treaty of Guadalupe Hidalgo.

During the time of sovereign control of California by Mexico, the body of law governing the ownership of lands covered by water was Law 3 and Law 6 of *Las Siete Partidas* (in evidence, Exhibit 5). Under those laws a private person could not have any property interest in land covered by the sea, the harbors

and the running rivers. The Ballona Lagoon, at the time of the Mexican grant and during Mexican sovereignty, was covered by water and subject to the daily ebb and flow of waters of the Pacific Ocean. Therefore, while subject to Mexican sovereignty, and under Mexican law, the grantees of said grant had no property interest in the lands known as the Ballona Lagoon.

By Chapter 77 of Statutes of California, 1917, and Chapter 1513 of Statutes of California, 1945, the State granted all tidelands and submerged lands within the City of Venice to Venice and its successors. Both statutes provide in substance that nothing contained therein shall in any way affect any property held or claimed under, through or from a Mexican grant or patent therefor.

8. The Ballona Lagoon has been the source of the flow of seawater to and from the canals northerly of the Ballona Lagoon for more than five years prior to the commencement of this action.

9. Members of the public have used the Ballona Lagoon for more than five years for purposes consistent with the easement of navigation, commerce and fishery and as though such easement was vested in the public. These uses and purposes included:

(1) Clam-digging for recreational and commercial purposes;

(2) Swimming;

(3) Boating for recreational purposes;

(4) Scenic enjoyment;

(5) A means of flushing brine into the sea; and

(6) A route for passage of tidal-waters to and from the Venice Canals.

Said uses were open, notorious and were known or should have been known by the owners or others claiming an interest in the Ballona Lagoon. Persons used the Ballona Lagoon in the same manner as they would have used it had it been publicly-owned property, and they were under a belief that it was such.

10. The State of California, through wardens of its Department of Fish and Game, enforced the provisions of the Fish and Game Code of California in the Ballona Lagoon relating to fishing.

11. The owners' efforts, if any, to prevent the usage of the Ballona Lagoon by the public for the aforesaid purposes have been sporadic, minimal, and unsuccessful. Said efforts when they occurred consisted of the posting of "No Trespassing" signs, but without further enforcement.

12. All portions of the Ballona Lagoon are located within 1,000 yards of the mean high-tide line of the Pacific Ocean.

13. Exhibit 89 describes by metes and bounds the geographical boundaries of the easement claimed by the City and State in that portion of Lot C of the Del Rey Beach Subdivision lying northwesterly of the Entrance Channel of Marina lel Rey. Said description is attached hereto and incorporated by reference.

14. The subdivision map of Del Rey Beach Subdivision depicts a large lot, designated as Lot C, irregularly drawn and different in shape and size from the lots proposed for a sale in said subdivision. The map of Silver Strand Subdivision depicts a large lot, designated as Lot R, irregularly drawn and different in shape and size from lots proposed for sale in Silver Strand Subdivision. The boundaries of said Lots C and R, except for those boundaries which correspond to the boundaries of the subdivision, approximately correspond to the shores of the Ballona Lagoon. The map of Del Rey Beach Subdivision plats a walkway immediately adjacent to Lot C and immediately next to the shore of the Ballona Lagoon labeled 'Esplanade East' and 'Esplanade West' at the edge of Lot R, but excluding the most westerly side of Lot R and along the banks of the Ballona Lagoon (excluding the most westerly bank.)

Lots C and R in the aforesaid subdivisions could have no other use and no other value than as a waterway. Lots C and R, together with Lot A of the adjacent Playa del Rey Townsite located southerly of Del Rey Beach Subdivision connected to one another and corresponded to the shape and size of the entire Ballona Lagoon. The use of the term 'esplanade' implied that

the rights-of-way so identified were to be along a shore and immediately adjacent to a waterway.

15. The subdividers of the Del Rey Beach Subdivision surveyed the boundaries of said Lot C intending to make the shores of the Ballona Lagoon the boundaries of said Lot C, and platted those boundaries in straight lines and regular curves, rather than irregular or complex curves, in accordance with survey practices in 1905.

16. The subdividers of Silver Strand Subdivision and Del Rey Beach Subdivision each sold some of the platted lots in their respective subdivisions. Lots C and R provide a means of ingress and egress by water to the lots which abut on the East and West, and Lot C (the Lagoon) was intended to be the 'frontage' of lots in Del Rey Beach and adjoining the 'Esplanades.'

17. Following the subdivision of Del Rey Beach and Silver Strand and following the platting of Lots C and R therein, and following the platting of the Grand Canal leading northerly from Lot R, lands were subdivided northerly of the northerly limit of Silver Strand Subdivision. Said subdivisions included areas designated as canals, and canals were actually constructed within said designated areas. (Said canals are known today as the "Venice Canals.") Some of the canals which were constructed continue to exist to this date and provide water access to abutting lots. At the time of recordation of said subdivisions and at the time of the construction of the canals, the major source of waters for the canals during dry seasons was through the Ballona Lagoon, and a secondary source was a canal located at the seaward terminus of Venice Boulevard. Another source, during rainstorms, was the flow of surface water from adjacent lands. For approximately the last 50 years the sole source of water has been through the Ballona Lagoon.

18. Each of the subdividers of the 'canal' subdivisions northerly of Silver Strand, as well as the public who purchased properties within said subdivisions, and the public itself, relied on the continued existence and the maintenance of Lots C and R (the Ballona Lagoon) as a passageway for seawater to and

from the Pacific Ocean. Said reliance was the construction of the canals in the manner in which they were constructed and their connection to the Grand Canal in Silver Strand Subdivision and thereby to the Ballona Lagoon.

19. Defendant and cross-defendant Summa Corporation is the owner of Lot C of the Del Rey Beach Subdivision as recorded in Book 6, page 186 of Maps, in the office of the recorder of Los Angeles County. Defendant and cross-defendant Southern California Gas Company possesses certain easements and other interests of record to said Lot C.

20. Defendants and cross-defendants Robert D. Byrne and Byrne C. Manson, as trustees under the Will of Olive Byrne Jones, deceased, Ruth Jones-Wright, and Venice Peninsula Properties are owners of Lot R of Silver Strand Subdivision as recorded in Book 7, page 86 of Maps in the office of the recorder of Los Angeles County.

21. The aforesaid Lot R and the aforesaid Lot C are located in and are a part of an area which has historically been known as "Ballona Lagoon," and together the aforesaid Lot R and the aforesaid Lot C comprise that area which is the subject matter of the within action (hereinafter "subject property.") The subject property lies within the City of Los Angeles, County of Los Angeles, State of California.

22. The subject property is a portion of "Rancho La Ballona," lands originally granted to Augustin and Ignacio Machado, and Felipe and Tomas Talamantes in 1839 by Juan B. Alvarado, the then Constitutional Governor of the Californias.

23. On February 2, 1848, the United States and Mexico entered into the Treaty of Guadalupe Hidalgo. Article VIII of that Treaty provided that existing property rights of Mexican citizens would be "inviolably respected," and on March 3, 1851, Congress passed "An Act to ascertain and settle private land claims in the State of California" (hereinafter "Act of 1851.") That Act of 1851 provided a method by which property rights of Mexican citizens in and to lands in the new State of

California could be could be confirmed and patented by the United States Government.

24. In accordance with the provisions of said Act of 1851, on October 2, 1852, Augustin Machado, *et al.*, petitioned the then Board of Land Commissioners for a decree confirming title to "Rancho La Ballona" in them. On February 14, 1854, after hearing, the Board confirmed title to "Rancho La Ballona" in Augustin Machado, *et al.*, and, after appeal by the United States, on December 19, 1855, the United States District Court for the Southern District of California upheld the Board's decision. No further appeal was taken, and in December of 1856 the District Court entered an order making its 1855 Order final.

25. Defendants and cross-defendants Summa Corporation, Venice Peninsula Properties, Ruth Jones-Wright, Robert D. Byrne and Byrne C. Manson, as trustees under the Will of Olive Byrne Jones, deceased, and Southern California Gas Company derive their title to their interests in the subject property from the aforesaid Augustin and Ignacio Machado, and Felipe and Tomas Talamantes.

26. Defendants and cross-defendants Summa Corporation, Venice Peninsula Properties, Ruth Jones-Wright, Robert D. Byrne and Byrne C. Manson, as trustees under the Will of Olive Byrne Jones, deceased, and Southern California Gas Company have never offered, intended to offer or attempted to offer to dedicate the subject property or any portion thereof for any purposes.

27. Members of the public have used a portion of the Ballona Lagoon, in the immediate vicinity of the tide gate, for more than five years for recreation and clam digging. This use was open and notorious. This use did not interfere with the operation and use of pipelines crossing beneath the Lagoon, which pipelines have been in use from prior to 1943 until the present time.

28. Any conclusion of law deemed to be a Finding of Fact is hereby incorporated in these Findings of Fact.

CONCLUSIONS OF LAW

From the foregoing facts the Court concludes that:

1. The State of California holds in trust for the people of the State of California an easement for navigation, commerce and fisheries in, over, upon and under the waters of the Ballona Lagoon up to the line of the mean high-tide within portions of Lot C of the Del Rey Beach Subdivision, more particularly described in the exhibit to these Findings of Fact and Conclusions of Law.

2. The public has an easement in the same portions of Lot C for the passage of fresh seawater from the Pacific Ocean through the Ballona Lagoon to the Venice Canals.

Said portions of Lot C are subject to an easement for general purposes of water recreation.

The same public easement exists in Lot R of Silver Strand, the boundaries of which are to be determined in the second portion of these bifurcated proceedings.

3. In the administration of the public easement referred to in Conclusion Number 1, the State of California, or its successors and assigns, has the right to open, dredge, construct sea walls, or otherwise improve the subject property without prior exercise of the power of eminent domain or payment of compensation.

4. The right of the State of California is paramount to the rights of the Southern California Gas Company, the holder of a pipeline easement within the portion of Lot C of Del Rey Beach Subdivision described in Exhibit 89.

5. The confirmation decree of the United States District Court with respect to the said Mexican grant of Rancho Ballona pursuant to the Treaty of Guadalupe Hidalgo was and is conclusive as to the title and boundaries of the land subject to the confirmation, but not as to the rights the patentees may have in the land. Said patent issued pursuant to said decree was subject to the sovereign right of the public to use the Ballona Lagoon for purposes of navigation, commerce and fishery.

6. The subdividers of Del Rey Beach Subdivision and Silver Strand Subdivision by recordation of the tract maps dedicated Lots C and R as public streets or waterways. The dedication of Lots C and R was accepted by the sale of some of the lots abutting Lots C and R, and by public use of Lots C and R.

DATED February 22, 1977

/s/ Samuel Greenfield
JUDGE OF THE SUPERIOR COURT

[Exhibit to Findings of Fact]

MEAN HIGH TIDE LINE OF THAT PORTION OF THE BALLONA LAGOON WITHIN LOT C, DEL REY BEACH

That portion of Lot C, Del Rey Beach, per map recorded in Book 6, page 186 of Maps, in the office of the County Recorder of Los Angeles County, bounded and described as follows:

Commencing at a point in the northwesterly line of Lot 16, Block 1, said Del Rey Beach, distant 105.38 feet northeasterly measured along said northwesterly line and its southwesterly prolongation from a line parallel with and distant 20 feet southwesterly measured at right angles from the southwesterly line of said Lot 16, said parallel line is to have a bearing of South 29° 17' 00" East for purposes of this description; thence southeasterly in a direct line to a point in a line having a bearing of North 59° 01' 38" East, said last-mentioned line to be known as Line "A" for purposes of this description, distant 108.00 feet northeasterly measured along said Line "A" from the southeasterly prolongation of said parallel line, said Line "A" passes through a point, to be known as Point "A" for purposes of this description, in said southeasterly prolongation distant South 29° 17' East 75.50 feet measured along said southeasterly prolongation from said southwesterly prolongation of the northwesterly line of Lot 16; thence southeasterly along a direct line to the TRUE POINT OF BEGINNING for purposes of this description in the southwesterly line of said Lot C, said last-mentioned direct line passes through a point in the northeasterly prolongation of a line parallel with and distant 20 feet southeasterly measured at right angles from the southeasterly line of Lot 19, said Block 1, said last-mentioned parallel line to be known as Line "B" for purposes of this description, distant 136.35 feet northeasterly measured along said Line "B" from its point of intersection with said southeasterly prolongation, having a bearing of South 29° 17' East, said point of intersection to be known as Point "B" for purposes of this description; thence southeasterly in a direct line to a point in a line having a bearing of North 59° 05' 00" East, said last-

mentioned line to be known as Line "C" for purposes of this description, distant 144.56 feet northeasterly measured along said Line "C" from the southeasterly prolongation of said parallel line having a bearing of South 29° 17' East, said Line "C" passes through a point to be known as Point "C" for purposes of this description, in said southeasterly prolongation distant south 29° 17' East 117.50 feet measured along said southeasterly prolongation from said Point "B"; thence southeasterly in a direct line to a point in the northeasterly prolongation of a line parallel with and distant 20 feet southeasterly measured at right angles from the southeasterly line of Lot 20, Block 2, said Del Rey Beach, said last-mentioned parallel line to be known as Line "D" for purpose of this description, distant 149.77 feet northeasterly measured along said Line "D" from its point of intersection with said southeasterly prolongation, said point of intersection to be known as Point "D" for purposes of this description; thence southeasterly in a direct line to a point in a line having a bearing of North 59° 05' 23" East, said last-mentioned line to be known as Line "E" for purposes of this description, distant 152.98 feet northeasterly measured along said Line "E" from said southeasterly prolongation, said Line "E" passes through a point, to be known as Point "E" for purposes of this description, in said southeasterly prolongation distant South 29° 17' East 117.56 feet measured along said southeasterly prolongation from said Point "D"; thence southeasterly in a direct line to a point in the northeasterly prolongation of a line parallel with and distant 20 feet southeasterly measured at right angles from the southeasterly line of Lot 20, Block 3 said Del Rey Beach, said last-mentioned parallel line to be known as Line "F" for purposes of this description, distant 145.19 feet northeasterly measured along said Line "F" from its point of intersection with said southeasterly prolongation, said point of intersection to be known as Point "F" for purposes of this description; thence southeasterly in a direct line to a point in a line having a bearing of North 59° 05' 15" East, said last-mentioned line to be known as Line "G" for purposes of this description, distant 154.40 feet northeasterly measured along said Line "G" from

said southeasterly prolongation, said Line "G" passes through a point, to be known as Point "G" for purposes of this description, in said southeasterly prolongation distant South 29° 17' East 117.57 feet measured along said southeasterly prolongation from said Point "F"; thence southeasterly in a direct line to a point in the northeasterly prolongation of a line parallel with and distant 20 feet southeasterly measured at right angles from the southeasterly line of Lot 20, Block 4 said Del Rey Beach, said last-mentioned parallel line to be known as Line "H" for purposes of this description, distant 147.60 feet northeasterly measured along said Line "H" from its point of intersection with said southeasterly prolongation, said point of intersection to be known as Point "H" for purposes of this description; thence southeasterly in a direct line to a point in a line having a bearing of North 59° 05' 38" East, said last-mentioned line to be known as Line "I" for purposes of this description, distant 140.82 feet northeasterly measured along said Line "I" from said southeasterly prolongation, said Line "I" passes through a point to be known as Point "I" for purposes of this description, in said southeasterly prolongation distant South 29° 17' East 117.61 feet measured along said southeasterly prolongation from said Point "H"; thence southeasterly in a direct line to a point in a line parallel with and distant 55 feet southeasterly measured at right angles from said Line "I", distant 16.9 feet northeasterly measured along said last-mentioned parallel line from said southwesterly line of Lot C; said last-mentioned parallel line to be known as Line "J" for purposes of this description; thence easterly in a direct line to a point in a line parallel with and distant 13.3 feet southeasterly measured at right angles from said Line "J" distant 57 feet northeasterly measured along said last-mentioned parallel line from said last-mentioned southwesterly line, said last-mentioned point to be known as Point "J", for purposes of this description, a line extending northwesterly in a direct line from the intersection of a line parallel with and distant 11 feet southeasterly measured at right angles from said Line "J" said last-mentioned line to be known as Line "K" for purposes of this description with a line extending northwesterly at right

angles from a line parallel with and distant 12 feet southeasterly measured at right angles from said Line "J" which passes through a point in said last-mentioned parallel line distant 72 feet northeasterly measured along said last-mentioned parallel line from said last-mentioned southwesterly line said last-mentioned parallel line to be known as Line "L" for purposes of this description, passes through a point in said Line "J" distant 60.9 feet northeasterly measured along said Line "J" from said last-mentioned southwesterly line, said last-mentioned line extending northwesterly in a direct line is to be known as Line "M" for purposes of this description; thence northeasterly in a direct line from said Point "J" to a point in said Line "M" distant 5.0 feet northwesterly measured along said Line "M" from said Line "K"; thence northerly in a direct line to a point in a line parallel with and distant 1 foot northeasterly measured at right angles from said Line "M" distant 6.8 feet northwesterly measured along said last-mentioned parallel line from said Line "K"; thence southeasterly along said last-mentioned parallel line to said Line "K"; thence northeasterly along said Line "K" to a point to be known as Point "K" for purposes of this description, in a line extending northwesterly at right angles from said Line "L" which passes through a point in said Line "L" distant 99.85 feet northeasterly measured along said Line "L" from said last-mentioned southwesterly line, a line extending northeasterly from said Point "K" passes through a point in said Line "J" distant 56.15 feet southwesterly measured along said Line "J" from the most southwesterly northeasterly line of said Lot C; thence northeasterly along said last-mentioned line extending northeasterly 6.8 feet; thence southeasterly in a direct line to a point in a line parallel with and distant 1 foot southeasterly measured at right angles from said last-mentioned line extending northeasterly, distant 4.5 feet northeasterly measured along said last-mentioned line extending northeasterly from said Line "K"; thence easterly in a direct line to the intersection of said Line "K" with a line extending northwesterly at right angles from said Line "L" which passes through a point in said Line "L" distant 108 feet

northeasterly measured along said Line "L" from said southwesterly line of Lot C; thence northeasterly in a direct line to a point in said Line "J" distant 17 feet southwesterly measured along said Line "J" from said northeasterly line of Lot C; thence northerly along a direct line which passes through a point in said Line "I", distant 6 feet northeasterly measured along said line "I" from said last-mentioned northeasterly line to said last-mentioned northeasterly line; thence northwesterly along said last-mentioned northeasterly line to a point in a line extending northwesterly in a direct line from said point in Line "I" distant 6 feet northeasterly measured along said Line "I" from said last-mentioned northeasterly line, to a point in said Line "H" distant 15 feet southwesterly measured along said Line "H" from said last-mentioned northeasterly line; thence northwesterly along said last-mentioned direct line to said last-mentioned point; thence northerly along a direct line which passes through a point in said Line "G" distant 9 feet northeasterly measured along said Line "G" from said last-mentioned northeasterly line to said last-mentioned northeasterly line; thence northwesterly along said last-mentioned northeasterly line to a line extending northwesterly in a direct line from a point in said Line "A" distant 1 foot northeasterly measured along said Line "A" from said last-mentioned northeasterly line which passes through a point in the most northwesterly line of said Lot C distant 6.35 feet southwesterly measured along said last-mentioned northwesterly line from said last-mentioned northeasterly line; thence northwesterly along said last-mentioned direct line to said last-mentioned northwesterly line; thence southwesterly along said last-mentioned northwesterly line to said southwesterly line of Lot C; thence southeasterly along said last-mentioned southwesterly line to the **TRUE POINT OF BEGINNING.**

APPENDIX A-6

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

THE CITY OF LOS ANGELES a municipal corporation,	)	NO. 868 223
	)	JUDGMENT
Plaintiff,	)	AFTER TRIAL
vs.	)	BY COURT
ETHEL FRASER CARMAN-RYLES, et al.,	)	
Defendants.	)	[Department 23]
THE CITY OF LOS ANGELES, Acting by and through the State Lands Commission,	)	
Cross-Complainant,	)	
vs.	)	
RUTH JONES WRIGHT, et al.,	)	
Cross-defendants	)	

The above-entitled matter came on regularly for trial commencing on February 18, 1975, before the Honorable Samuel Greenfield, Judge Presiding, in Department 23 of the above-entitled court without a jury. Burt Pines, City Attorney, Norman L. Roberts, Assistant City Attorney, and Anthony P. Parrille, Deputy City Attorney, by Anthony P. Parrille, appeared for plaintiff and cross-defendant, THE CITY OF LOS ANGELES. Loren Miller, Jr., William A. Dorland and Jack D. Janofsky by William A. Dorland appered for defendant and cross-defendant, SOUTHERN CALIFORNIA GAS COMPANY. Hill, Farrer & Burrill, William M. Bitting and Steven W. Bacon by William M. Bitting and Steven W. Bacon

appeared for defendant and cross-defendant, SUMMA CORPORATION (formerly known as "Hughes Tool Company"). Evelle J. Younger, Attorney General, Alan V. Hager, Jerold Krieger and Russell Iungerich, Deputy Attorneys General, by Russell Iungerich, appeared for defendant and cross-complainant, the STATE OF CALIFORNIA. Pacht, Ross, Warne, Bernhard and Sears, Inc., by Henry J. Shames and Paul Hamilton, appeared for defendant and cross-defendant, VENICE PENINSULA PROPERTIES. Mitchell and Mitchell and David J. Pierce, by David J. Pierce, appeared for defendants and cross-defendant, RUTH JONES-WRIGHT, and for defendants and cross-defendants ROBERT D. BYRNE and BYRNE C. MANSON as trustees under the Will of Olive Byrne Jones, deceased.

Pursuant to stipulation of the parties and good cause appearing therefor, on April 24, 1975, trial of the matter was ordered bifurcated. Thereafter, between April 24, 1975 and May 13, 1975 the court heard the testimony and examined the proof offered by the parties pertaining to the first stage of the trial.

Following trial on the first stage of the trial and post trial proceedings, Findings of Fact and Conclusions of Law were executed by the Court on February 22, 1977, determining the issues as to the existence of easements and as to the geographical boundaries of said easements in Lot C of Del Rey Beach Subdivision only (that portion lying northwesterly of the Marina del Rey entrance channel).

Thereafter, a stipulation among all defendants, excluding SUMMA and SOUTHERN CALIFORNIA GAS COMPANY, was executed and filed with the court on August 10, 1977. Thereby those parties executing same agreed to the geographical boundaries of the State's and City's easements within Lot R of the Silver Strand Subdivision, waived trial on the issue of the geographical boundaries within said Lot R, and consented to a judgment being entered as to said boundaries, said judgment however being subject to a right to appeal therefrom.

Both the first and second stages of the bifurcated trial having been concluded, the court having heard the testimony, considered the evidence and the court having already filed its Findings of Fact and Conclusions of Law and having considered and reviewed said stipulation:

IT IS THEREFORE ADJUDGED, DETERMINED AND DECREED:

1. That the STATE OF CALIFORNIA holds in trust for the People of the State of California an easement for navigation, commerce and fisheries in, over, upon and under the waters of the Ballona Lagoon up to the line of the Mean High Tide within portions of Lot C of the Del Rey Beach Subdivision and within portions of Lot R of the Silver Strand Subdivision more particularly described in those exhibits attached hereto and made a part hereof entitled "Mean High Tide Line of that portion of the Ballona Lagoon within Lot C Del Rey Beach" and "Mean High Tide Line of that portion of the Ballona Lagoon within Lot R, Silver Strand Subdivison."

2. The public has an easement in the same portions of Lots C and R for the passage of fresh sea water from the Pacific Ocean through the Ballona Lagoon to the Venice Canals.

Said portions of Lots C and R are also subject to an easement for general purposes of water recreation.

3. The State of California, its successors and/or assigns has the right to open, dredge, construct sea walls or otherwise improve the subject property without prior exercise of the right of eminent domain or payment of compensation.

4. The right of the State of California is paramount to the right of the Southern California Gas Company, the holder of a pipeline easement within the portions of Lot C of Del Rey Beach Subdivision described in Exhibit 89.

5. The City of Los Angeles is the owner of an easement for public streets or waterways in all of the real property described and designated as Lot C of the Del Rey Beach Subdivision and as Lot R of the Silver Strand Subdivision, the easements therein were offered for recordation of the Tract Maps of said

subdivisions. Acceptance was by the sale of some of the lots abutting Lots C and R and by public use of Lots C and R.

6. Each party is ordered to bear its own costs of suit herein.

The Clerk is ordered to enter this Judgment.

DATED: October 11, 1977.

/s/ Samuel Greenfield
SAMUEL GREENFIELD
Judge of the Superior Court

[Exhibit to Judgment]

MEAN HIGH TIDE LINE OF THAT PORTION OF THE BALLONA LAGOON WITHIN LOT C, DEL REY BEACH

That portion of Lot C, Del Rey Beach, per map recorded in Book 6, page 186 of Maps, in the office of the County Recorder of Los Angeles County, bounded and described as follows:

Commencing at a point in the northwesterly line of Lot 16, Block 1, said Del Rey Beach, distant 105.38 feet northeasterly measured along said northwesterly line and its southwesterly prolongation from a line parallel with and distant 20 feet southwesterly measured at right angles from the southwesterly line of said Lot 16, said parallel line is to have a bearing of South 29° 17' 00" East for purposes of this description; thence southeasterly in a direct line to a point in a line having a bearing of North 59° 01' 38" East, said last-mentioned line to be known as Line "A" for purposes of this description, distant 108.00 feet northeasterly measured along said Line "A" from the southeasterly prolongation of said parallel line, said Line "A" passes through a point, to be known as Point "A" for purposes of this description, in said southeasterly prolongation distant South 29° 17' East 75.50 feet measured along said southeasterly prolongation from said southwesterly prolongation of the northwesterly line of Lot 16; thence southeasterly along a direct line to the TRUE POINT OF BEGINNING for purposes of this description in the southwesterly line of said Lot C, said last-mentioned direct line passes through a point in the northeasterly prolongation of a line parallel with and distant 20 feet southeasterly measured at right angles from the southeasterly line of Lot 19, said Block 1, said last-mentioned parallel line to be known as Line "B" for purposes of this description, distant 136.35 feet northeasterly measured along said Line "B" from its point of intersection with said southeasterly prolongation, having a bearing of South 29° 17' East, said point of intersection to be known as Point "B" for purposes of this description; thence southeasterly in a direct line to a point in a line having a bearing of North 59° 05' 00" East, said last-

mentioned line to be known as Line "C" for purposes of this description, distant 144.56 feet northeasterly measured along said Line "C" from the southeasterly prolongation of said parallel line having a bearing of South 29° 17′ East, said Line "C" passes through a point to be known as Point "C" for purposes of this description, in said southeasterly prolongation distant south 29° 17′ East 117.50 feet measured along said southeasterly prolongation from said Point "B"; thence southeasterly in a direct line to a point in the northeasterly prolongation of a line parallel with and distant 20 feet southeasterly measured at right angles from the southeasterly line of Lot 20, Block 2, said Del Rey Beach, said last-mentioned parallel line to be known as Line "D" for purpose of this description, distant 149.77 feet northeasterly measured along said Line "D" from its point of intersection with said southeasterly prolongation, said point of intersection to be known as Point "D" for purposes of this description; thence southeasterly in a direct line to a point in a line having a bearing of North 59° 05′ 23″ East, said last-mentioned line to be known as Line "E" for purposes of this description, distant 152.98 feet northeasterly measured along said Line "E" from said southeasterly prolongation, said Line "E" passes through a point, to be known as Point "E" for purposes of this description, in said southeasterly prolongation distant South 29° 17′ East 117.56 feet measured along said southeasterly prolongation from said Point "D"; thence southeasterly in a direct line to a point in the northeasterly prolongation of a line parallel with and distant 20 feet southeasterly measured at right angles from the southeasterly line of Lot 20, Block 3 said Del Rey Beach, said last-mentioned parallel line to be known as Line "F" for purposes of this description, distant 145.19 feet northeasterly measured along said Line "F" from its point of intersection with said southeasterly prolongation, said point of intersection to be known as Point "F" for purposes of this description; thence southeasterly in a direct line to a point in a line having a bearing of North 59° 05′ 15″ East, said last-mentioned line to be known as Line "G" for purposes of this description, distant 154.40 feet northeasterly measured along said Line "G" from

said southeasterly prolongation, said Line "G" passes through a point, to be known as Point "G" for purposes of this description, in said southeasterly prolongation distant South 29° 17' East 117.57 feet measured along said southeasterly prolongation from said Point "F"; thence southeasterly in a direct line to a point in the northeasterly prolongation of a line parallel with and distant 20 feet southeasterly measured at right angles from the southeasterly line of Lot 20, Block 4 said Del Rey Beach, said last-mentioned parallel line to be known as Line "H" for purposes of this description, distant 147.60 feet northeasterly measured along said Line "H" from its point of intersection with said southeasterly prolongation, said point of intersection to be known as Point "H" for purposes of this description; thence southeasterly in a direct line to a point in a line having a bearing of North 59° 05' 38" East, said last-mentioned line to be known as Line "I" for purposes of this description, distant 140.82 feet northeasterly measured along said Line "I" from said southeasterly prolongation, said Line "I" passes through a point to be known as Point "I" for purposes of this description, in said southeasterly prolongation distant South 29° 17' East 117.61 feet measured along said southeasterly prolongation from said Point "H"; thence southeasterly in a direct line to a point in a line parallel with and distant 55 feet southeasterly measured at right angles from said Line "I", distant 16.9 feet northeasterly measured along said last-mentioned parallel line from said southwesterly line of Lot C; said last-mentioned parallel line to be known as Line "J" for purposes of this description; thence easterly in a direct line to a point in a line parallel with and distant 13.3 feet southeasterly measured at right angles from said Line "J" distant 57 feet northeasterly measured along said last-mentioned parallel line from said last-mentioned southwesterly line, said last-mentioned point to be known as Point "J", for purposes of this description, a line extending northwesterly in a direct line from the intersection of a line parallel with and distant 11 feet southeasterly measured at right angles from said Line "J" said last-mentioned line to be known as Line "K" for purposes of this description with a line extending northwesterly at right

angles from a line parallel with and distant 12 feet southeasterly measured at right angles from said Line "J" which passes through a point in said last-mentioned parallel line distant 72 feet northeasterly measured along said last-mentioned parallel line from said last-mentioned southwesterly line said last-mentioned parallel line to be known as Line "L" for purposes of this description, passes through a point in said Line "J" distant 60.9 feet northeasterly measured along said Line "J" from said last-mentioned southwesterly line, said last-mentioned line extending northwesterly in a direct line is to be known as Line "M" for purposes of this description; thence northeasterly in a direct line from said Point "J" to a point in said Line "M" distant 5.0 feet northwesterly measured along said Line "M" from said Line "K"; thence northerly in a direct line to a point in a line parallel with and distant 1 foot northeasterly measured at right angles from said Line "M" distant 6.8 feet northwesterly measured along said last-mentioned parallel line from said Line "K"; thence southeasterly along said last-mentioned parallel line to said Line "K"; thence northeasterly along said Line "K" to a point to be known as Point "K" for purposes of this description, in a line extending northwesterly at right angles from said Line "L" which passes through a point in said Line "L" distant 99.85 feet northeasterly measured along said Line "L" from said last-mentioned southwesterly line, a line extending northeasterly from said Point "K" passes through a point in said Line "J" distant 56.15 feet southwesterly measured along said Line "J" from the most southwesterly northeasterly line of said Lot C; thence northeasterly along said last-mentioned line extending northeasterly 6.8 feet; thence southeasterly in a direct line to a point in a line parallel with and distant 1 foot southeasterly measured at right angles from said last-mentioned line extending northeasterly, distant 4.5 feet northeasterly measured along said last-mentioned line extending northeasterly from said Line "K"; thence easterly in a direct line to the intersection of said Line "K" with a line extending northwesterly at right angles from said Line "L" which passes through a point in said Line "L" distant 108 feet

northeasterly measured along said Line "L" from said southwesterly line of Lot C; thence northeasterly in a direct line to a point in said Line "J" distant 17 feet southwesterly measured along said Line "J" from said northeasterly line of Lot C; thence northerly along a direct line which passes through a point in said Line "I", distant 6 feet northeasterly measured along said line "I" from said last-mentioned northeasterly line to said last-mentioned northeasterly line; thence northwesterly along said last-mentioned northeasterly line to a point in a line extending northwesterly in a direct line from said point in Line "I" distant 6 feet northeasterly measured along said Line "I" from said last-mentioned northeasterly line, to a point in said Line "H" distant 15 feet southwesterly measured along said Line "H" from said last-mentioned northeasterly line; thence northwesterly along said last-mentioned direct line to said last-mentioned point; thence northerly along a direct line which passes through a point in said Line "G" distant 9 feet northeasterly measured along said Line "G" from said last-mentioned northeasterly line to said last-mentioned northeasterly line; thence northwesterly along said last-mentioned northeasterly line to a line extending northwesterly in a direct line from a point in said Line "A" distant 1 foot northeasterly measured along said Line "A" from said last-mentioned northeasterly line which passes through a point in the most northwesterly line of said Lot C distant 6.35 feet southwesterly measured along said last-mentioned northwesterly line from said last-mentioned northeasterly line; thence northwesterly along said last-mentioned direct line to said last-mentioned northwesterly line; thence southwesterly along said last-mentioned northwesterly line to said southwesterly line of Lot C; thence southeasterly along said last-mentioned southwesterly line to the **TRUE POINT OF BEGINNING.**

[Exhibit to Judgment]

MEAN HIGH TIDE LINE OF THAT PORTION OF THE BALLONA LAGOON WITHIN LOT R, SILVER STRAND

PARCEL 1

That portion of Lot R, Silver Strand per map recorded in Book 7, pages 86 and 87, of Maps, in the office of the County Recorder of Los Angeles County, bounded and described as follows:

Beginning at a point in that certain course in the southeasterly line of said Lot R shown as having a bearing and length of North 62° 07' East 149.02 feet on said map distant 26 feet northeasterly measured along said course from the most southerly corner of said lot; thence northwesterly in a direct line to the intersection of the southwesterly line of said lot with a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of Lot Q said tract; thence northwesterly in a direct line to a point in the southwesterly prolongation of a line parallel with and distant 7.5 feet northwesterly measured at right angles from the northwesterly line of Lot 6, Block 17 said Silver Strand distant 9 feet northeasterly measured along said southwesterly prolongation from said southwesterly line said southwesterly prolongation is to be hereainafter referred to as Line "A"; thence northwesterly in a direct line to a point in a line which extends southwesterly from the intersection of a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of Lot 1 said Block 17, with a line parallel with and distant 5 feet southwesterly measured at right angles from the southwesterly line of said Lot 1 and which passes through the intersection of said southwesterly line of Lot R with a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of Lot P said tract distant 5 feet northeasterly measured along said line extending southwesterly from said southwesterly line of Lot R, said line extending southwesterly is to be hereinafter referred to as Line B; thence northwesterly along a direct line which passes

through a point in the southwesterly prolongation of a line parallel with and distant 7.5 feet northwesterly measured at right angles from the northwesterly line of Lot 6, Block 16 said tract distant 6 feet southwesterly measured along said last-mentioned southwesterly prolongation from said southwesterly line of Lot R to said southwesterly line of Lot R said last-mentioned southwesterly prolongation is to be hereinafter referred to as Line "C"; thence northwesterly along said southwesterly line of Lot R to a point distant 675.14 feet northwesterly measured along said southwesterly line of Lot R from said most southerly corner; thence northeasterly at right angles from said southwesterly line of Lot R to the northeasterly line of Lot R; thence southeasterly along said northeasterly line of Lot R to a line which extends southeasterly from a point in a line parallel with and distant 5 feet southwesterly measured at right angles from the southwesterly line of Lot 1 said Block 16 distant 1 foot northerly measured along said last-mentioned parallel line from its intersection with a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of said last-mentioned Lot 1 and which passes through the intersection of a line parallel with and distant 3 feet northwesterly measured at right angles from Line "C" with a line parallel with and distant 6 feet southwesterly measured at right angles from said northeasterly line of Lot R; thence southeasterly along said line extending southeasterly to said last-mentioned intersection; thence southeasterly in a direct line to the intersection of a line parallel with and distant 25 feet southeasterly measured at right angles from line "C" with a line parallel with and distant 3 feet southwesterly measured at right angles from said northeasterly line of Lot R; thence southeasterly in a direct line to a point in Line "B" distant 7 feet southwesterly measured along Line "B" from said northeasterly line of Lot R; thence southeasterly along a direct line which passes through a point in Line "A" distant 5 feet northeasterly measured along Line "A" from said northeasterly line of Lot R to said northeasterly line of Lot R; thence southeasterly along said northeasterly line of Lot R to the northeasterly terminus of said course having a bearing and

length of North 62° 07' East 149.02 feet; thence southwesterly along said last-mentioned course to the point of beginning.

PARCEL 2

That portion of Lot R Silver Strand per map recorded in Book 7, pages 86 and 87, of Maps, in the office of the County Recorder of Los Angeles County, bounded and described as follows:

Beginning at a point in the southwesterly line of said Lot R distant 675.14 feet northwesterly measured along said southwesterly line from the most southerly corner of said lot; thence northwesterly along said southwesterly line to a line which extends northwesterly from a point in a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of Lot N said tract distant 2 feet southwesterly measured along said parallel line from said southwesterly line and which passes through a point in the southwesterly prolongation of a line parallel with and distant 7.5 feet northwesterly measured at right angles from the northwesterly line of Lot 6, Block 14 said tract distant 10 feet northeasterly measured along said southwesterly prolongation from said southwesterly line; thence northwesterly along said line extending northwesterly to said last-mentioned point; thence northwesterly in a direct line to a point in a line extending southwesterly from the intersection of a line parallel with and distant 5 feet southwesterly measured at right angles from the southwesterly line of Lot 1 said Block 14 with a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of said Lot 1 and which passes through the intersection of a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of Lot M said tract with said southwesterly line of Lot R distant 29 feet northeasterly measured along said last-mentioned line extending southwesterly from said southwesterly line of Lot R; thence northwesterly in a direct line to a point in the southwesterly prolongation of a line parallel with and distant 7.5 northwesterly measured at right angles from the northwesterly line of Lot 6 Block 13 said tract distant 40

feet northeasterly measured along said last-mentioned prolongation from said southwesterly line of Lot R; thence northwesterly to a point in the northeasterly prolongation of a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of Lot L said tract distant 20 feet northeasterly measured along said northeasterly prolongation from said southwesterly line of Lot R; thence northwesterly in a direct line to a point in the southwesterly prolongation of a line parallel with and distant 40.9 feet southeasterly measured at right angles from the northwesterly line of Lot 6 Block 12 said tract distant 35 feet northeasterly measured along said last-mentioned southwesterly prolongation from said southwesterly line of Lot R said last-mentioned southwesterly prolongation is to be hereinafter referrred to as Line "E"; thence northwesterly along a direct line which passes through a point in the southwesterly prolongation of a line parallel with and distant 7.5 feet northwesterly measured at right angles from said last-mentioned northwesterly line distant 27 feet northeasterly measured along said last-mentioned southwesterly prolongation from said southwesterly line of Lot R, said last-mentioned line extending southwesterly is to be hereinafter referrred to as Line "F", to a line extending northeasterly at right angles from said last-mentioned southwesterly line from a point distant 1328.51 feet northwesterly measured along said last-mentioned southwesterly line from said most southerly corner; thence northeasterly along said line extending northeasterly to a line extending southeasterly from a point in Line "F" distant 5 feet southwesterly measured along said Line "F" from said northeasterly line and which passes through a point in Line "E" distant 5 feet southwesterly measured along said Line "E" from said northeasterly line; thence southeasterly along said last-mentioned line extending southeasterly to said last-mentioned point; thence distant 2 feet northeasterly measured along said Line "D" from said northeasterly line to said northeasterly line; thence southeasterly along said northeasterly line to a line extending northeasterly at right angles from said southwesterly line and which passes through the

point of beginning; thence southwesterly along said last-mentioned line extending northeasterly to the point of beginning.

PARCEL 3

That portion of Lot R, Silver Strand per map recorded in Book 7, pages 86 and 87, of Maps, in the office of the County Recorder of Los Angeles County, bounded and described as follows:

Beginning at the intersection of a line extending northeasterly from a point in the southwesterly line of said Lot R distant 132.51 feet northwesterly measured along said southwesterly line from the most southerly corner of said lot with a line which extends northwesterly from a point in the southwesterly prolongation of a line parallel with and distant 40.9 feet southeasterly measured at right angles from the northwesterly line of Lot 6, Block 12 said tract distant 35 feet northeasterly measured along said southeasterly prolongation from said southwesterly line, said southwesterly prolongation is to be hereinafter referred to as Line "E" and which passes through a point in the southwesterly prolongation of a line parallel with and distant 7.5 feet northwesterly measured at right angles from said northwesterly line distant 27 feet northeasterly measured along southwesterly prolongation is to be hereinafter referred to as Line "F"; thence northwesterly along said line extending northwesterly to said Line "F"; thence northwesterly in a direct line to a point in a line which extends northeasterly from the intersection of a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of Lot K said tract with said southwesterly line and which passes through the intersection of a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of Lot 1 said block with a line parallel with and distant 5 feet southwesterly measured at right angles from the southwesterly line of said Lot 1, distant 14 feet northeasterly measured along said line extending northeasterly from said southwesterly line of Lot R, said line extending northeasterly is to be hereinafter referred to as Line "G"; thence in a direct line to a point in the southwesterly prolongation of a line

parallel with and distant 7.5 feet northwesterly measured at right angles from the northwesterly line of Lot 6, Block 11 said tract distant 29 feet northeasterly measured along said last-mentioned southwesterly prolongation from said last-mentioned southwesterly line, said last-mentioned southwesterly prolongation is to be hereinafter referred to as Line "H"; thence northwesterly in a direct line to a point in a line extending northeasterly from the intersection of a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of Lot J, said tract with said last-mentioned southwesterly line, said last-mentioned prolongation is to be hereinafter referred to as Point "I" and which passes through the intersection of a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of Lot 1, said Block 11 with a line parallel with and distant 5 feet southwesterly measured at right angles from the southwesterly line of said last-mentioned Lot 1, distant 21 feet northeasterly measured along said last-mentioned line extending northeasterly from said southeasterly line of Lot R, said last-mentioned line extending northeasterly is to be hereinafter referred to as Line "I"; thence northwesterly in a direct line to a point in a line extending northeasterly at right angles from said last-mentioned southwesterly line from a point distant 56.02 feet northwesterly measured along said last-mentioned southwesterly line from point "I" distant 26 feet northeasterly measured along said last-mentioned line extending northeasterly from said last-mentioned southwesterly line; thence northeasterly along said last-mentioned line extending northeasterly 21 feet; thence parallel with said last-mentioned southwesterly line 72 feet; thence parallel with said last-mentioned line extending northeasterly 34 feet; thence parallel with said last-mentioned line extending northeasterly 34 feet; thence parallel with said last-mentioned southwesterly line 72 feet; thence northwesterly in a direct line to a point in the northeasterly prolongation of a line parallel with and distant 29 feet northwesterly measured at right angles from the northwesterly line of Lot "I", said tract distant 15 feet northeasterly measured

along said last-mentioned prolongation from said last-mentioned southwesterly line; said last-mentioned northeasterly prolongation is to be hereinafter referred to as Line "J"; thence northwesterly in a direct line to a direct line to a point in the southwesterly prolongation of a line parallel with and distant 7.5 feet northwesterly measured at right angles from the northwesterly line of Lot 6, Block 9 said tract distant 9 feet northeasterly measured along said last-mentioned southwesterly prolongation from said last-mentioned southwesterly line, said last-mentioned southwesterly prolongation is to be hereinafter referred to as Line "K"; thence northwesterly in a direct line to a point in the northeasterly prolongation of a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of Lot H, said tract distant 13 feet northeasterly measured along said last-mentioned northeasterly prolongation from said last-mentioned southwesterly line, said last-mentioned northeasterly prolongation is to be hereinafter referred to as Line "L"; thence northwesterly in a direct line to a point in the southwesterly prolongation of a radial line which passes through the southerly terminus of that certain curve in the northeasterly line of said Lot P shown on the map of said tract as having a radius of 202.18 feet, distant 24 feet northeasterly measured along said last-mentioned southwesterly prolongation from said last-mentioned southwesterly line, said last-mentioned southwesterly prolongation is to be hereinafter referred to as Line "M"; thence northeasterly along Line "M" to a point distant 5 feet southwesterly measured along Line "M" from the northeasterly line of said Lot R; thence southeasterly in a direct line to a point in Line "L", distant 12 feet southwesterly measured along Line "L" from said northeasterly line; thence southeasterly in a direct line to a point in Line "K" distant 7 feet southwesterly measured along Line "K" from said northeasterly line; thence southeasterly in a direct line to a point in Line "J" distant 6 feet southwesterly measured along Line "J" from said northeasterly line; thence southeasterly in a direct line to a point in the southwesterly prolongation of a line parallel with and distant 7.5 feet northwesterly measured at right angles from the northwesterly line of Lot 6, Block 10 said

tract distant 2 feet southwesterly measured along said last-mentioned southwesterly prolongation from said northeasterly line; thence southeasterly in a direct line to a point in Line "I" distant 3 feet southwesterly measured along Line "I" from said notheasterly line; thence southeasterly in a direct line to a point in Line "H", distant 1 foot southwesterly measured along Line "H" from said notheasterly line; thence southeasterly in a direct line to a point in Line "G" distant 4 feet southwesterly measured along Line "G" from said northeasterly line; thence southeasterly in a direct line to a point in Line "F", distant 5 feet southwesterly measured along Line "F" from said northeasterly line; thence southeasterly along a direct line which passes through a point in Line "E", distant 5 feet southwesterly measured along Line "E" from said northeasterly line to said line extending northeasterly at right angles from said last-mentioned southwesterly line distant 1328.51 feet northwesterly measured along said last-mentioned southwesterly line from said most southerly corner; thence southwesterly along said last-mentioned line extending northeasterly to the point of beginning.

ALSO that portion of said Lot R lying southeasterly of a line extending northeasterly from said southwesterly line of Lot R, distant 2378.35 feet northwesterly measured along said southwesterly line from said most southerly corner included within a parcel of land bounded and described as follows:

Commencing at the southerly terminus of that certain curve in the southwesterly, westerly and northwesterly lines of said Lot R shown as having a radius of 339.58 feet on said map; thence northwesterly along said curve through a central angle of 9° 00′ 00″; thence northeasterly along a radial line of said curve 93 feet to the TRUE POINT OF BEGINNING; thence in a direct line to a point in a line parallel with and distant 8 feet southeasterly measured at right angles from said southeasterly radial line distant 97 feet northeasterly measured along a direct line extending northeasterly from the southwesterly terminus of said radial line; thence southeasterly in a direct line to point in the northeasterly prolongation of a line parallel with and distant 20 feet northwesterly measured at right angles from the

northwesterly line of Lot G, said tract distant 73 feet northeasterly measured along said last-mentioned northeasterly prolongation from the southwesterly line of said Lot R; thence southerly along the southeasterly prolongation of said last-mentioned direct line 46 feet; thence southwesterly along a line intersecting a line extending northeasterly from said southwesterly line of Lot R from a point distant 10 feet southeasterly measured along said southwesterly line of Lot R from the most northerly corner of said Lot G at a point distant 7 feet northeasterly measured along said last-mentioned line extending northeasterly from said southwesterly line of Lot R to a point in a line parallel with and distant 45 feet northerly measured at right angles from said southwesterly line of Lot R; thence southeasterly in a direct line to said point in Line M, distant 24 feet northeasterly measured along said Line "M" from said last-mentioned southwesterly line; thence northeasterly along Line "M" to said point distant 5 feet southwesterly measured along Line "M" from said northeasterly line; thence northwesterly along a direct line which passes through a point in curve concave easterly having a radius of 197.18 and being concentric with said curve having a radius of 202.18, distant 12 feet southeasterly measured along said curve from its intersection with a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of Lot 1, Block 8 said tract to said curve having a radius of 202.18 feet; thence northeasterly along said last-mentioned curve to said last-mentioned radial line; thence southwesterly along said last-mentioned radial line to the TRUE POINT OF BEGINNING.

PARCEL 4

That portion of Lot R Silver Strand per map recorded in Book 7, pages 86 and 87, of Maps, in the office of the County Recorder of Los Angeles County, bounded and described as follows:

Commencing at the southerly terminus of that certain curve in the southwesterly, westerly and northwesterly lines of said Lot R shown as having a radius of 339.58 feet on said map; thence northwesterly along said curve through a central angle

of 9° 00′ 00″; thence northeasterly along a radial line of said curve 93 feet to the TRUE POINT OF BEGINNING; thence in a direct line to a point in a line parallel with and distant 8 feet southeasterly measured at right angles from said radial line distant 97 feet northeasterly measured along a direct line extending northeasterly from the southwesterly terminus of said radial line; thence southeasterly in a direct line to a point in the northeasterly prolongation of a line parallel with and distant 20 feet northwesterly measured at right angles from the northwesterly line of Lot G said tract distant 73 feet northeasterly measured along said last-mentioned northeasterly prolongation from the southwesterly line of said Lot R; thence southerly the southeasterly prolongation of said last-mentioned direct line 46 feet; thence southwesterly along a line intersecting a line extending northeasterly from said southwesterly line of Lot R from a point distant 10 feet southeasterly measured along said southwesterly line of Lot R from the most northerly corner of said Lot G at a point distant 7 feet northeasterly measured along said last-mentioned line extending northeasterly from said southwesterly line of Lot R to a point in a line parallel with and distant 45 feet northeasterly measured at right angles from said southerwesterly line of Lot R southeasterly along a direct line which passes through a point in the southwesterly prolongation of a radial line of that certain curve in the northeasterly line of said Lot R shown as having a 202.18 feet on said map which passes through the southerly terminus of said last-mentioned curve distant 24 feet northeasterly measured along said southwesterly prolongation from said southwesterly line of Lot R to a line extending northeasterly at right angles from a point in said last-mentioned southwesterly line distant 2378.35 feet northwesterly measured along said last-mentioned southwesterly line from the most southerly corner of said Lot R; said line extending northeasterly is to having a bearing of South 56° 29′ West for purposes of this description; thence northeasterly along said last-mentioned line extending northeasterly to said curve having a radius of 202.18 feet; thence northerly along said curve having a radius of

202.18 feet to a point in a line extending northeasterly from a point in a radial line of said last-mentioned curve having a bearing of North 87° 31' West distant 5 feet westerly measured along said radial line from its intersection with a curve concave easterly having a radius of 197.18 feet and being concentric with said curve having a radius of 202.18 feet and which passes through a point in a radial line of said last-mentioned curve having a bearing of North 60° 31' West distant 6 feet northwesterly measured along said last-mentioned radial line from said curve having a radius of 197.18 feet; thence northeasterly along said last-mentioned line extending northeasterly to said point distant 6 feet northwesterly; thence northeasterly along a direct line which passes through a point in a radial of said curve having a radius of 339.58 feet which passes through its northerly terminus distant 8 feet northwesterly measured along said last-mentioned radial line from said curve having a radius of 197.18 feet to a radial line of said curve having a radius of 339.58 feet which passes through a point in said last-mentioned curve distant 335.44 feet southwesterly measured along the northwesterly line of said Lot R from its most northerly corner; thence northwesterly along said last-mentioned radial line to a point in a line extending southwesterly from a point in a radial line of said last-mentioned curve having a bearing of North 42° 31' West distant 1 foot southeasterly measured along said last-mentioned radial line from said last-mentioned curve and which passes through a point in a radial line of said last-mentioned curve having a bearing of North 51° 31' West distant 14 feet southeasterly measured along said last-mentioned radial line from said last-mentioned curve; thence southwesterly along said last-mentioned line extending southwesterly to said last-mentioned radial line; thence southerly in a direct line to a point in said radial line having a bearing of North 60° 31' West distant 23.5 feet southeasterly measured along said last-mentioned radial line from said last-mentioned curve; thence southerly in a direct line to a point in a radial line of said last-mentioned curve having a bearing of North 69° 31' West distant 26 feet easterly measured along said last-mentioned radial line from said last-mentioned curve; thence southeasterly in a direct

line to a point in a radial line of said last-mentioned curve having a bearing of North 78° 31' West distant 45 feet easterly measured along said last-mentioned radial line from said last-mentioned curve; thence southeasterly in a direct line to a point in said radial line having a bearing of North 87° 31' West distant 72 feet easterly measured along said last-mentioned radial line from said last-mentioned curve; thence southeasterly in a direct line to a point in a radial line of said curve having a bearing of South 83° 29' West distant 100 feet easterly measured along said last-mentioned radial line from said last-mentioned curve; thence southeasterly in a direct line to a point in a radial line of said curve having a bearing of South 74° 29' West distant 107 feet easterly measured along said last-mentioned radial line from said last-mentioned curve; thence in a direct line to the TRUE POINT OF BEGINNING.

EXCEPTING therefrom that portion bounded and described as follows:

Beginning at a point in said radial line having a bearing of North 69° 31' West distant 93 feet easterly measured along said last-mentioned radial line from said last-mentioned curve; thence northwesterly in a direct line to point in a line parallel with and distant 9 feet northerly measured at right angles from said last-mentioned radial line distant 10 feet westerly measured along said last-mentioned parallel line from a line extending northeasterly at right angles from said last-mentioned radial line and passes through the point of beginning; thence northeasterly in a direct line to a point in said last-mentioned line extending northeasterly distant 18 feet northwesterly measured along said last-mentioned line extending northeasterly from said last-mentioned radial line; thence southeasterly in a direct line to a point in said last-mentioned parallel line distant 10 feet easterly measured along said last-mentioned parallel line from said last-mentioned line extending northeasterly; thence southerly in a direct line to a point in said last-mentioned radial line distant 11 feet easterly measured along said last-mentioned radial line from the point of beginning; thence westerly along said last-mentioned radial line to the point of beginning.

PARCEL 5

That portion of Lot R, Silver Strand per map recorded in Book 7, pages 86 and 87, of Maps, in the office of the County Recorder of Los Angeles County, bounded and described as follows:

Commencing at the southwesterly terminus of that certain course in the northwesterly line of said Lot R shown as having a bearing and length of North 56° 29′ East 230.42 feet on said map; thence southwesterly along that certain curve in said northwesterly line shown as having a radius of 339.58 feet to a radial line of said curve which passes through a point in said curve distant 335.44 feet southwesterly measured along said northwesterly line from the most northerly corner of said lot; thence southeasterly along said radial line to the TRUE POINT OF BEGINNING in a line extending northerly from a point in a radial line of said curve having a bearing of North 51° 31′ North distant 14 feet southeasterly measured along said last-mentioned radial line from said curve and which passes through a point in a radial line of said curve having a bearing of North 42° 31′ West distant 1 foot southeasterly measured along said last-mentioned radial line from said curve; thence northerly along said line extending northerly to said last-mentioned radial line; thence northeasterly in a direct line to a point in a radial line of said curve which passes through its northerly terminus distant 0.5 feet southeasterly measured along said last-mentioned radial line from said curve; thence northeasterly along a direct line which passes through a point in the southwesterly line of Lot B said tract distant 3 feet northwesterly measured along said southwesterly line from said northwesterly line to said northwesterly line; thence northeasterly along said northwesterly line to a point distant 111 feet southwesterly measured along said northwesterly line from the most northerly corner of said lot; thence southeasterly in a direct line to a point in the southeasterly prolongation of the northeasterly line of said Lot B distant 15 feet southeasterly measured along said southeasterly prolongation from said northwesterly line, said southeasterly prolongation is to be hereinafter referred to as Line "N"; thence northeasterly in a

direct line to a point in a line extending southeasterly at right angles from said northwesterly line from a point distant 57 feet northeasterly measured along said northwesterly line from the most easterly corner of said Lot B distant 28 feet southeasterly measured along said last-mentioned line extending southeasterly from said northwesterly line, said line extending southeasterly is to be hereinafter referred to as Line "O"; thence northerly along a direct line which passes through a point in the northeasterly prolongation of said northwesterly line distant 2 feet northwesterly measured along said last-mentioned northeasterly prolongation from said most northerly corner to the northeasterly line of said Lot R; thence southeasterly along said northeasterly line to the intersection of a line extending southwesterly from a point in a line extending southeasterly from said northeasterly prolongation from a point distant 37 feet northwesterly measured along said northwesterly prolongation from said most northerly corner with a line parallel with and distant 182 feet southeasterly measured at right angles from said northwesterly line and which passes through a point in Line "O" distant 10 feet northwesterly measured along Line "O" from that certain course in the northeasterly line of said Lot R shown as having a bearing and length of North 52° 58' East 251.28 feet on said map; thence southwesterly along said last-mentioned line extending southwesterly to said last-mentioned point in Line "O"; thence southwesterly in a direct line to a point in said Line "N" distant 8 feet northwesterly measured along Line "N" from a line parallel with and distant 5 feet southeasterly measured at right angles from said course having a bearing and length of North 52° 58' East 251.28 feet; thence southwesterly in a direct line to a point in the southeasterly prolongation of the southwesterly line of said Lot B distant 7 feet northwesterly measured along said last-mentioned southeasterly prolongation from said course having a bearing and length of North 52° 58' East 251.28 feet; thence southwesterly in a direct line to a point in said radial line of said curve which passes through its northerly terminus distant 8 feet northwesterly measured along said last-mentioned radial line from a curve concave westerly having a radius of 197.18 feet and being

concentric with that certain curve in said northeasterly line of said Lot R shown as having a radius of 202.18 feet; thence southwesterly along a direct line which passes through a point in a radial line of said curve having a radius of 339.58 feet which bears North 60° 31' West distant 6 feet westerly measured along said last-mentioned radial line from said curve having a radius of 197.18 feet to said radial line of said curve having a radius of 339.58 feet which passes through a point in said last-mentioned curve distant 339.58 feet southwesterly measured along said northwesterly line of Lot R from said most northerly corner; thence northwesterly along said last-mentioned radial line to the TRUE POINT OF BEGINNING.

APPENDIX B-1

TREATY OF PEACE, FRIENDSHIP, LIMITS, AND SETTLEMENT WITH THE REPUBLIC OF MEXICO

In the name of Almighty God:

The United States of America and the United Mexican States, animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two republics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony, and mutual confidence wherein the two people should live, as good neighbors, have for that purpose appointed their respective plenipotentiaries — that is to say, the President of the United States has appointed Nicholas P. Trist, a citizen of the United States, and the President of the Mexican republic has appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto, and Don Miguel Atristain, citizens of the said republic, who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the author of peace, arrange, agreed upon, and signed the following

Treaty of Peace, Friendship, Limits, and Settlement between the United States of America and the Mexican Republic.

ARTICLE I.

There shall be firm and universal peace between the United States of America and the Mexican republic, and between their respective countries, territories, cities, towns, and people, without exception of places or persons.

ARTICLE II.

Immediately upon the signature of this treaty, a convention shall be entered into between a commissioner or commissioners appointed by the General-in-chief of the forces of the United States, and such as may be appointed by the Mexican government, to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said

forces, constitutional order may be reestablished, as regards the political, administrative, and judicial branches, so far as this shall be permitted by the circumstances of military occupation.

ARTICLE III.

Immediately upon the ratification of the present treaty by the government of the United States, orders shall be transmitted to the commanders of their land and naval forces, requiring the latter (provided this treaty shall then have been ratified by the government of the Mexican republic, and the ratifications exchanged) immediately to desist from blockading any Mexican ports; and requiring the former (under the same condition) to commence, at the earliest moment practicable, withdrawing all troops of the United States then in the interior of the Mexican republic, to points that shall be selected by common agreement, at a distance from the seaports not exceeding thirty leagues; and such evacuation of the interior of the republic shall be completed with the least possible delay; the Mexican government hereby binding itself to afford every facility in its power for rendering the same convenient to the troops, on their march and in their new positions, and for promoting a good understanding between them and the inhabitants. In like manner orders shall be despatched to the persons in charge of the custom-houses at all ports occupied by the forces of the United States, requiring them (under the same condition) immediately to deliver possession of the same to the persons authorized by the Mexican government to receive it, together with all bonds and evidences of debt for duties on importations and on exportations, not yet fallen due. Moreover, a faithful and exact account shall be made out, showing the entire amount of all duties on imports and on exports, collected at such custom-houses, or elsewhere in Mexico, by authority of the United States, from and after the day of the ratification of this treaty by the government of the Mexican republic; and also an account of the cost of collection; and such entire amount, deducting only the cost of collection, shall be delivered to the Mexican government, at the city of Mexico, within three months after the exchange of ratifications.

The evacuation of the capital of the Mexican republic by the troops of the United States, in virtue of the above stipulation, shall be completed in one month after the orders there stipulated for shall have been received by the commander of said troops, or sooner if possible.

ARTICLE IV.

Immediately after the exchange of ratifications of the present treaty, all castles, forts, territories, places, and possessions, which have been taken or occupied by the forces of the United States during the present war, within the limits of the Mexican republic, as about to be established by the following article, shall be definitively restored to the said republic, together with all the artillery, arms, apparatus of war, munitions, and other public property, which were in the said castles and forts when captured, and which shall remain there at the time when this treaty shall be duly ratified by the government of the Mexican republic. To this end, immediately upon the signature of this treaty, orders shall be despatched to the American officers commanding such castles and forts, securing against the removal or destruction of any such artillery, arms, apparatus of war, munitions, or other public property. The city of Mexico, within the inner line of intrenchments surrounding the said city, is comprehended in the above stipulations, as regards the restoration of artillery, apparatus of war, &c.

The final evacuation of the territory of the Mexican republic, by the forces of the United States, shall be completed in three months from the said exchange of ratifications, or sooner if possible: the Mexican government hereby engaging, as in the foregoing article, to use all means in its power for facilitating such evacuation, and rendering it convenient to the troops, and for promoting a good understanding between them and the inhabitants.

If, however, the ratification of this treaty by both parties should not take place in time to allow the embarcation of the troops of the United States to be completed before the commencement of the sickly season, at the Mexican ports on the Gulf of Mexico, in such case a friendly arrangement shall be

entered into between the General-in-chief of the said troops and the Mexican government, whereby healthy and otherwise suitable places, at a distance from the ports not exceeding thirty leagues, shall be designated for the residence of such troops as may not yet have embarked, until the return of the healthy season. And the space of time here referred to as comprehending the sickly season, shall be understood to extend from this first day of May to the first day of November.

All prisoners of war taken on either side, on land or on sea, shall be restored as soon as practicable after the exchange of ratifications of this treaty. It is also agreed that if any Mexicans should now be held as captives by any savage tribe within the limits of the United States, as about to be established by the following article, the government of the said United States will exact the release of such captives, and cause them to be restored to their country.

ARTICLE V.

The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town call *Paso)* to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the River Gila; (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

The southern and western limits of New Mexico, mentioned in this article, are those laid down in the map entitled *"Map of*

the United Mexican States, as organized and defined by various acts of the Congress of said republic, and constructed according to the best authorities. Revised edition. Published at New York, in 1847 *by J. Disturnell."* Of which map a copy is added to this treaty, bearing the signatures and seals of the undersigned plenipotentiaries. And in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean distant one marine league due south of the southernmost point of the port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja, second sailing-master of the Spanish fleet, and published at Madrid in the year 1802, in the Atlas to the voyage of the schooners *Sutil* and *Mexicana*, of which plan a copy is hereunto added, signed and sealed by the respective plenipotentiaries.

In order to designate the boundary line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both republics, as described in the present article, the two governments shall each appoint a commissioner and a surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the port of San Diego, and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result agreed upon by them shall be deemed a part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

The boundary line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the general government of each, in conformity with its own constitution.

ARTICLE VI.

The vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the Gulf of California, and by the River Colorado below its confluence with the Gila, to and from their possessions situated north of the boundary line defined in the preceding article; it being understood that this passage is to be by navigating the Gulf of California and the River Colorado, and not by land, without the express consent of the Mexican government.

If, by the examinations which may be made, it should be ascertained to be practicable and advantageous to construct a road, canal, or railway, which should in whole or in part run upon the River Gila, or upon its right or its left bank, within the space of one marine league from either margin of the river, the governments of both republics will form an agreement regarding its construction, in order that it may serve equally for the use and advantage of both countries.

ARTICLE VII.

The River Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of New Mexico, being, agreeably to the fifth article, divided in the middle between the two republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right; not even for the purpose of favoring new methods of navigation. Nor shall any tax or contribution, under any denomination or title, be levied upon vessels, or persons navigating the same, or upon merchandise or effects transported thereon, except in the case of landing upon one of their shores. If, for the purpose of making the said rivers navigable, or for maintaining them in such state, it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both governments.

The stipulations, contained in the present article shall not impair the territorial rights of either republic within its established limits.

ARTICLE VIII.

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to citizens of the United States.

ARTICLE IX.

Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of

the United States, according to the principles of the constitution; and in in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

ARTICLE X.

[Stricken out]

ARTICLE XI.

Considering that a great part of the territories which, by the present treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme, it is solemnly agreed that all such incursions shall be forcibly restrained by the government of the United States whensoever this may be necessary; and that when they cannot be prevented, they shall be punished by the said government, and satisfaction for the same shall be exacted — all in the same way, and with equal diligence and energy, as if the same incursions were meditated or committed within its own territory, against its own citizens.

It shall not be lawful, under any pretext whatever, for any inhabitant of the United States to purchase or acquire any Mexican, or any foreigner residing in Mexico, who may have been captured by Indians inhabiting the territory of either of the two republics, nor to purchase or acquire horses, mules, cattle, or property of any kind, stolen within Mexican territory by such Indians.

And in the event of any person or persons, captured within Mexican territory by Indians, being carried into the territory of the United States, the government of the latter engages and binds itself, in the most solemn manner, so soon as it shall know of such captives being within its territory, and shall be able so to do, through the faithful exercise of its influence and power, to rescue them and return them to their country, or deliver

them to the agent or representative of the Mexican government. The Mexican authorities will, as far as practicable, give to the government of the United States notice of such captures; and its agent shall pay the expenses incurred in the maintenance and transmission of the rescued captives; who, in the meantime, shall be treated with the utmost hospitality by the American authorities at the place where they may be. But if the government of the United States, before receiving such notice from Mexico, should obtain intelligence, through any other channel, of the existence of Mexican captives within its territory, it will proceed forthwith to effect their release and delivery to the Mexican agent, as above stipulated.

For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And finally, the sacredness of this obligation shall never be lost sight of by the said government when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but on the contrary, special care shall then be taken not to place its Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.

ARTICLE XII.

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth article of the present treaty, the government of the United States engages to pay to that of the Mexican republic the sum of fifteen millions of dollars.

Immediately after this treaty shall have been duly ratified by the government of the Mexican republic, the sum of three millions of dollars shall be paid to the said government by that of the United States, at the city of Mexico, in the gold or silver coin of Mexico. The remaining twelve millions of dollars shall be paid at the same place, and in the same coin, in annual

instalments of three millions of dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions from the day of the ratification of the present treaty by the Mexican government, and the first of the instalments shall be paid at the expiration of one year from the same day. Together with each annual instalment, as it falls due, the whole interest accruing on such instalment from the beginning shall also be paid.

ARTICLE XIII.

The United States engage, moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated and decided against the Mexican republic, under the conventions between the two republics severally concluded on the eleventh day of April, eighteen hundred and thirty-nine, and on the thirtieth day of January, eighteen hundred and forty-three; so that the Mexican republic shall be absolutely exempt, for the future, from all expense whatever on account of the said claims.

ARTICLE XIV.

The United States do furthermore discharge the Mexican republic from all claims of citizens of the United States, not heretofore decided against the Mexican government, which may have arisen previously to the date of the signature of this treaty; which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the board of commissioners provided for in the following article, and whatever shall be the total amount of those allowed.

ARTICLE XV.

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and forever cancelled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and

one quarter millions of dollars. To ascertain the validity and amount of those claims,, a board of commissioners shall be established by the government of the United States, whose awards shall be final and conclusive: provided, that in deciding upon the validity of each claim, the board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth articles of the unratified convention, concluded at the city of Mexico on the twentieth day of November, one thousand eigth hundred and forty-three; and in no case shall an award be made in favor of any claim not embraced by these principles and rules.

If, in the opinion of the said board of commissioners, or of the claimants, any books, records or documents in the possession or power of the government of the Mexican republic, shall be deemed necessary to the just decision of any claim, the commissioners, or the claimants through them, shall, within such period as Congress may designate, make an application in writing for the same, addressed to the Mexican Minister for Foreign Affairs, to be transmitted by the Secretary of State of the United States; and the Mexican government engages, at the earliest possible moment after the receipt of such demand, to cause any of the books, records, or documents, so specified, which shall be in their possession or power, (or authenticated copies or extracts of the same,) to be transmitted to the said Secretary of State, who shall immediately deliver them over to the said board of commissioners: *Provided,* That no such application shall be made by, or at the instance of, any claimant, until the facts which it is expected to prove by such books, records, or documents, shall have been stated under oath or affirmation.

ARTICLE XVI.

Each of the contracting parties reserves to itself the entire right to fortify whatever point within its territory it may judge proper so to fortify, for its security.

ARTICLE XVII.

The treaty of amity, commerce, and navigation, concluded at the city of Mexico on the fifth day of April, A. D. 1831, between

the United States of America and the United Mexican States, except the additional article, and except so far as the stipulations of the said treaty may be incompatible with any stipulation contained in the present treaty, is hereby revived for the period of eight years from the day of the exchange of ratifications of this treaty, with the same force and virtue as if incorporated therein; it being understood that each of the contracting parties reserves to itself the right, at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.

ARTICLE XVIII.

All supplies whatever for troops of the United States in Mexico, arriving at ports in the occupation of such troops previous to the final evacuation thereof, although subsequently to the restoration of the custom-houses at such ports, shall be entirely exempt from duties and charges of any kind; the government of the United States hereby engaging and pledging its faith to establish, and vigilantly to enforce, all possible guards for securing the revenue of Mexico, by preventing the importation, under cover of this stipulation, of any articles other than such, both in kind and in quantity, as shall really be wanted for the use and consumption of the forces of the United States during the time they may remain in Mexico. To this end, it shall be the duty of all officers and agents of the United States to denounce to the Mexican authorities at the respective ports any attempts at a fraudulent abuse of this stipulation which they may know of or may have reason to suspect, and to give to such authorities all the aid in their power with regard thereto; and every such attempt, when duly proved and established by sentence of a competent tribunal, shall be punished by the confiscation of the property so attempted to be fraudulently introduced.

ARTICLE XIX.

With respect to all merchandise, effects, and property whatsoever, imported into ports of Mexico whilst in the occupation

of the forces of the United States, whether by citizens of either republic, or by citizens or subjects of any neutral nation, the following rules shall be observed: —

1. All such merchandise, effects, and property, if imported previously to the restoration of the custom-houses to the Mexican authorities, as stipulated for in the third article of this treaty, shall be exempt from confiscation, although the importation of the same be prohibited by the Mexican tariff.

2. The same perfect exemption shall be enjoyed by all such merchandise, effects, and property, imported subsequently to the restoration of the custom-houses, and previously to the sixty days fixed in the following article for the coming into force of the Mexican tariff at such ports respectively; the said merchandise, effects, and property being, however, at the time of their importation, subject to the payment of duties, as provided for in the said following article.

3. All merchandise, effects, and property described in the two rules foregoing shall, during their continuance at the place of importation, and upon their leaving such place for the interior, be exempt from all duty, tax, or impost of every kind, under whatsoever title or denomination. Nor shall they be there subjected to any charge whatsoever upon the sale thereof.

4. All merchandise, effects, and property, described in the first and second rules, which shall have been removed to any place in the interior whilst such place was in the occupation of the forces of the United States, shall, during their continuance therein, be exempt from all tax upon the sale or consumption thereof, and from every kind of impost or contribution, under whatsoever title or denomination.

5. But if any merchandise, effects, or property, described in the first and second rules, shall be removed to any place not occupied at the time by the forces of the United States, they shall, upon their introduction into such place, or upon their sale or consumption there, be subject to the same duties which, under the Mexican laws, they would be required to pay in such cases if they had been imported in time of peace, through the

maritime custom-houses, and had there paid the duties conformably with the Mexican tariff.

6. The owners of all merchandise, effects, or property described in the first and second rules, and existing in any port of Mexico, shall have the right to reship the same, exempt from all tax, impost, or contribution whatever.

With respect to the metals, or other property, exported from any Mexican port whilst in the occupation of the forces of the United States, and previously to the restoration of the custom-house at such port, no person shall be required by the Mexican authorities, whether general or state, to pay any tax, duty, or contribution upon any such exportation, or in any manner to account for the same to the said authorities.

ARTICLE XX.

Through consideration for the interests of commerce generally, it is agreed, that if less than sixty days should elapse between the date of the signature of this treaty and the restoration of the custom-houses, conformably with the stipulation in the third article, in such case all merchandise, effects, and property whatsoever, arriving at the Mexican ports after the restoration of the said custom-houses, and previously to the expiration of sixty days after the day of the signature of this treaty, shall be admitted to entry; and no other duties shall be levied thereon than the duties established by the tariff found in force at such custom-houses at the time of the restoration of the same. And to all such merchandise, effects, and property, the rules established by the preceding article shall apply.

ARTICLE XXI.

If unhappily any disagreement should hereafter arise between the governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle

the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves; using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborship, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

ARTICLE XXII.

If (which is not to be expected, and which God forbid!) war should unhappily break out between the two republics, they do now, with a view to such calamity, solemnly pledge themselves to each other and to the world, to observe the following rules; absolutely where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible: —

1. The merchants of either republic then residing in the other shall be allowed to remain twelve months, (for those dwelling in the interior,) and six months (for those dwelling at the seaports,) to collect their debts and settle their affairs; during which periods, they shall enjoy the same protection, and be on the same footing, in all respects, as the citizens or subjects of the most friendly nations; and, at the expiration thereof, or at any time before, they shall have full liberty to depart, carying off all their effects without molestation or hinderance, conforming therein to the same laws which the citizens or subjects of the most friendly nations are required to conform to. Upon the entrance of the armies of either nation into the territories of the other, women and children, ecclesiastics, scholars of every

faculty, cultivators of the earth, merchants, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all persons whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments unmolested in their persons. Nor shall their houses or goods be burnt or otherwise destroyed, nor their cattle taken, nor their fields wasted, by the armed force into whose power, by the events of war, they may happen to fall; but if the necessity arise to take any thing from them for the use of such armed force, the same shall be paid for at an equitable price. All churches, hospitals, schools, colleges, libraries, and other establishments for charitable and beneficent purposes, shall be respected, and all persons connected with the same protected in the discharge of their duties, and the pursuit of their vocations.

2. In order that the fate of prisoners of war may be alleviated, all such practices as those of sending them into distant inclement or unwholesome districts, or crowding them into close and noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison-ships or prisons; nor be put in irons, or bound, or otherwise restrained in the use of their limbs. The officers shall enjoy liberty on their paroles, within convenient districts, and have comfortable quarters; and the common soldier shall be disposed in cantonments, open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are for its own troops. But if any officer shall break his parole by leaving the district so assigned him, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual, officer, or other prisoner, shall forfeit so much of the benefit of this article as provides for his liberty on parole or in cantonment. And if any officer so breaking his parole, or any common soldier so escaping from the limits assigned him, shall afterwards be found in arms, previously to his being regularly exchanged, the person so offending shall be dealt with according to the established laws of war. The officers shall be daily furnished by the party in whose power they are, with as many rations, and of

the same articles, as are allowed, either in kind or by commutation, to officers of equal rank in its own army; and all others shall be daily furnished with such ration as is allowed to a common soldier in its own service: the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party, on a mutual adjustment of accounts for the subsistence of prisoners; and such accounts shall not be mingled with or set off against any others, nor the balance due on them be withheld, as a compensation or reprisal for any cause whatever, real or pretended. Each party shall be allowed to keep a commissary of prisoners, appointed by itself, with every cantonment of prisoners, in possession of the other; which commissary shall see the prisoners as often as he pleases; shall be allowed to receive, exempt from all duties or taxes, and to distribute, whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom he is employed.

And it is declared that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending the solemn covenant contained in this article. On the contrary, the state of war is precisely that for which it is provided; and during which, its stipulations are to be as sacredly observed as the most acknowledged obligations under the law of nature or nations.

ARTICLE XXIII.

This treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; by the President of the Mexican republic, with the previous approbation of its General Congress; and the ratifications shall be exchanged in the city of Washington, or at the seat of government of Mexico, in four months from the date of the signature hereof, or sooner if practicable.

In faith whereof, we, the respective plenipotentiaries, have signed this treaty of peace, friendship, limits, and settlement; and have hereunto affixed our seals respectively. Done in quintuplicate, at the city of Guadalupe Hidalgo, on the second day

of February, in the year of our Lord one thousand eight hundred and forty-eight.

N. P. TRIST, [L.S.]
LUIS G. CUEVAS, [L.S.]
BERNARDO COUTO, [L.S.]
MIGL. ATRISTAIN, [L.S.]

APPENDIX B-2

CHAP. XLI. — *An Act to ascertain and settle the private Land Claims in the State of California.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of ascertaining and settling private land claims in the State of California, a commission shall be, and is hereby, constituted, which shall consist of three commissioners, to be appointed by the President of the United States, by and with the advice and consent of the Senate, which commission shall continue for three years from the date of this act, unless sooner discontinued by the President of the United States.

SEC. 2. *And be it further enacted,* That a secretary, skilled in the Spanish and English languages, shall be appointed by the said commissioners, whose duty it shall be to act as interpreter, and to keep a record of the proceedings of the board in a bound book, to be filed in the office of the Secretary of the Interior on the termination of the commission.

SEC. 3. *And be it further enacted,* That such clerks, not to exceed five in number, as may be necessary, shall be appointed by the said commissioners.

SEC. 4. *And be it further enacted,* That it shall be lawful for the President of the United States to appoint an agent learned in the law, and skilled in the Spanish and English languages, whose special duty it shall be to superintend the interests of the United States in the premises, to continue him in such agency as long as the public interest may, in the judgment of the President, require his continuance, and to allow him such compensation as the President shall deem reasonable. It shall be the duty of the said agent to attend the meetings of the board, to collect testimony in behalf of the United States, and to attend on all occasions when the claimant, in any case before the board, shall take depositions; and no deposition taken by or in behalf of any such claimant shall be read in evidence in any case,whether before the commissioners, or before the District or Supreme Court of the United States, unless notice of the time

and place of taking the same shall have been given in writing to said agent, or to the district attorney of the proper district, so long before the time of taking the deposition as to enable him to be present at the time and place of taking the same, and like notice shall be given of the time and place of taking any deposition on the part of the United States.

SEC. 5. *And be it further enacted,* That the said commissioners shall hold their sessions at such times and places as the President of the United States shall direct, of which they shall give due and public notice; and the marshal of the district in which the board is sitting shall appoint a deputy, whose duty it shall be to attend upon the said board, and who shall receive the same compensation as is allowed to the marshal for his attendance upon the District Court.

SEC. 6. *And be it further enacted,* That the said commissioners, when sitting as a board, and each commissioner at his chambers, shall be, and are, and is hereby, authorized to administer oaths, and to examine witnesses in any case pending before the commissioners, that all such testimony shall be taken in writing, and shall be recorded and preserved in bound books to be provided for that purpose.

SEC. 7. *And be it further enacted,* That the secretary of the board shall be, and he is hereby, authorized and required, on the application of the law agent or district attorney of the United States, or of any claimant or his counsel, to issue writs of subpoena commanding the attendance of a witness or witnesses before the said board or any commissioner.

SEC. 8. *And be it further enacted,* That each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government, shall present the same to the said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claims; and it shall be the duty of the commissioners, when the case is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of

the said claim, and, within thirty days after such decision is rendered, to certify the same, with the reasons on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered.

SEC. 9. *And be it further enacted,* That in all cases of the rejection or confirmation of any claim by the board of commissioners, it shall and may be lawful for the claimant or the district attorney, in behalf of the United States, to present a petition to the District Court of the district in which the land claimed is situated, praying the said court to review the decision of the said commissioners, and to decide on the validity of such claim; and such petition, if presented by the claimant, shall set forth fully the nature of the claim and the names of the original and present claimants, and shall contain a deraignment of the claimant's title, together with a transcript of the report of the board of commissioners, and of the documentary evidence and testimony of the witnesses on which it was founded; and such petition, if presented by the district attorney in behalf of the United States, shall be accompanied by a transcript of the report of the board of commissioners, and of the papers and evidence on which it was founded, and shall fully and distinctly set forth the grounds on which the said claim is alleged to be invalid, a copy of which petition, if the same shall be presented by a claimant, shall be served on the district attorney of the United States, and, if presented in behalf of the United States, shall be served on the claimant or his attorney; and the party upon whom such service shall be made shall be bound to answer the same within a time to be prescribed by the judge of the District Court; and the answer of the claimant to such petition shall set forth fully the nature of the claim, and the names of the original and present claimants, and shall contain a deraignment of the claimant's title; and the answer of the district attorney in behalf of the United States shall fully and distinctly set forth the grounds on which the said claim is alleged to be invalid, copies of which answers shall be served upon the adverse party thirty days before the meeting of the court, and thereupon, at the first term of the court

thereafter, the said case shall stand for trial, unless, on cause shown, the same shall be continued by the court.

SEC. 10. *And be it further enacted,* That the District Court shall proceed to render judgment upon the pleadings and evidence in the case, and upon such further evidence as may be taken by order of the said court, and shall, on application of the party against whom judgment is rendered, grant an appeal to the Supreme Court of the United States, on such security for costs in the District and Supreme Court, in case the judgment of the District Court shall be affirmed, as the said court shall prescribe; and if the court shall be satisfied that the party desiring to appeal is unable to give such security, the appeal may be allowed without security.

SEC. 11. *And be it further enacted,* That the commissioners herein provided for, and the District and Supreme Courts, in deciding on the validity of any claim brought before them under the provisions of this act, shall be governed by the treaty of Guadalupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States, so far as they are applicable.

SEC. 12. *And be it further enacted,* That to entitle either party to a review of the proceedings and decision of the commissioners herein before provided for, notice of the intention of such party to file a petition to the District Court shall be entered on the journal or record of proceedings of the commissioners within sixty days after their decision on the claim has been made and notified to the parties, and such petition shall be filed in the District Court within six months after such decision has been rendered.

SEC. 13. *And be it further enacted,* That all lands, the claims to which have been finally rejected by the commissioners in manner herein provided, or which shall be finally decided to be invalid by the District or Supreme Court, and all lands the claims to which shall not have been presented to the said commissioners within two years after the date of this act, shall be deemed, held, and considered as part of the public domain of

the United States; and for all claims finally confirmed by the said commissioners, or by the said District or Supreme Court, a patent shall issue to the claimant upon his presenting to the general land office an authentic certificate of such confirmation, and a plat or survey of the said land, duly certified and approved by the surveyor-general of California, whose duty it shall be to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same; and in the location of the said claims, the said surveyor-general shall have the same power and authority as are conferred on the register of the land office and receiver of the public moneys of Louisiana, by the sixth section of the act "to create the office of surveyor of the public lands for the State of Louisiana," approved third March, one thousand eight hundred and thirty-one: *Provided, always,* That if the title of the claimant to such lands shall be contested by any other person, it shall and may be lawful for such person to present a petition to the district judge of the United States for the district in which the lands are situated, plainly and distinctly setting forth his title thereto, and praying the said judge to hear and determine the same, a copy of which petition shall be served upon the adverse party thirty days before the time appointed for hearing the same. *And provided, further,* That it shall and may be lawful for the district judge of the United States, upon the hearing of such petition, to grant an injunction to restrain the party at whose instance the claim to the said lands has been confirmed, from suing out a patent for the same, until the title thereto shall have been finally decided, a copy of which order shall be transmitted to the commissioner of the general land office, and thereupon no patent shall issue until such decision shall be made, or until sufficient time shall, in the opinion of the said judge, have been allowed for obtaining the same; and thereafter the said injunction shall be dissolved.

SEC. 14. *And be it further enacted,* That the provisions of this act shall not extend to any town lot, farm lot, or pasture lot, held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Spanish or Mexican government, or the lawful authorities

thereof, nor to any city, or town, or village lot, which city, town, or village existed on the seventh day of July, eighteen hundred and forty-six; but the claim for the same shall be presented by the corporate authorities of the said town, or where the land on which the said city, town, or village was originally granted to an individual, the claim shall be presented by or in the name of such individual, and the fact of the existence of the said city, town, or village on the said seventh July, eighteen hundred and forty-six, being duly proved, shall be prima facie evidence of a grant to such corporation, or to the individual under whom the said lot-holders claim; and where any city, town or village shall be in existence at the time of passing this act, the claim for the land embraced within the limits of the same may be made by the corporate authority of the said city, town, or village.

Sec. 15. *And be it further enacted,* That the final decrees rendered by the said commissioners, or by the District or Supreme Court of the United States, or any patent to be issued under this act, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons.

Sec. 16. *And be it further enacted,* That it shall be the duty of the commissioners herein provided for to ascertain and report to the Secretary of the Interior the tenure by which the mission lands are held, and those held by civilized Indians, and those who are engaged in agriculture or labor of any kind, and also those which are occupied and cultivated by Pueblos or Rancheros Indians.

Sec. 17. *And be it further enacted,* That each commissioner appointed under this act shall be allowed and paid at the rate of six thousand dollars per annum; that the secretary of the commissioners shall be allowed and paid at the rate of four thousand dollars per annum; and the clerks herein provided for shall be allowed and paid at the rate of one thousand five hundred dollars per annum; the aforesaid salaries to commence from the day of the notification by the commissioners of the first meeting of the board.

Sec. 18. *And be it further enacted,* That the secretary of the board shall receive no fee except for furnishing certified copies of any paper or record, and for issuing writs of subpoena. For furnishing certified copies of any paper or record, he shall receive twenty cents for every hundred words, and for issuing writs of subpoena, fifty cents for each witness; which fees shall be equally divided between the said secretary and the assistant clerk.

APPROVED, MARCH 3, 1851.

APPENDIX C-1

PATENT FOR RANCHO LA BALLONA

The United States of America
To all to whom these presents shall come
Greeting:

Whereas it appears from a duly authenticated transcript filed in the General Land Office of the United States that pursuant to the provisions of the Act of Congress approved the third day of March One thousand eight hundred and fifty one entitled "An Act to ascertain and settle the Private Land Claims in the State of California" Augustin and Ignacio Machado and Felipe and Tomas Talamantes as claimants, filed their petition on the second day of October Anno Domini One thousand and eight hundred and fifty two with the commissioners to ascertain and settle the private land claims in the State of California sitting as a Board in the City of Los Angeles in which petition they claimed the confirmation of their title to a tract of land known by the name of "Ballona" situate in the County of Los Angeles and State aforesaid said claim being founded on a Mexican Grant to Augustin and Ignacio Machado and Felipe and Tomas Talamantes made in the twenty seventh day of November A.D. One thousand eight hundred and thirty nine by Juan B. Alvarado then constitutional Governor of the Department of the Californias.

And whereas the Board of Land Commissioners aforesaid on the fourteenth day of February Anno Domini, One thousand eight hundred and fifty four in the cause entitled "Augustin Machado, Ignacio Machado, Felipe Talamantes and Tomas Talamantes vs. the United States" rendered a decree of confirmation in favor of the claimants which said decree or decision having been taken by appeal to the District Court of the United States for the Southern District of California the said District Court at its December Term 1855, in the cause entitled "Augustin Machado et al Appellees ads. The United States appellants" rendered its decree as follows to wit:

It is ordered adjudged and decreed that the said decision be confirmed and it is further ordered adjudged and decreed that the claim of the appellees to a certain tract of land in Los Angeles County west of the City of Los Angeles about three leagues and bordering on the sea shore called Ballona is valid, that the said tract of land being the same and for the last 18 or 19 years occupied by the appellees and bounded as follows viz. Beginning at a cottonwood tree at a considerable distance from the house of said rancho which is marked with hatchet cuts, thence running east 7835 varas to a little pole bridge thence south 9800 varas to the mouth of a creek (Estero). Thence west along the sea coast 7300 varas to the deep gullies (barrancas) thence northerly 7800 varas to the place of beginning reference for a more particular description being had to the grant map and judicial possession on file in the case.

And thereafter a stipulation having been made by the attorneys of the parties in interest that appeal in this case would not be prosecuted to the Supreme Court of the United States and filed in the aforesaid District Court. The said District Court at its December Term A.D. 1856 ordered adjudged and decreed That the order granting the appeal to the Supreme Court be revoked and that the decree of confirmation heretofore made by this Court in the said cause to wit: On the 19th day of December A.D. 1855 be and the same is now hereby made final. Whereby the proceedings Court upon title became final.

And whereas under the 13th Section of Said Act of 3 March 1851 and the supplemental legislation and in accordance with the proceedings had pursuant to said act and supplemental legislation there has been deposited in the General Land Office a return with the descriptive notes and plat of survey of the said claim confirmed as aforesaid authenticated by the signature of the United States Surveyor General for the State of California which descriptive notes and plat of survey are in the words and figures as follows to wit:

U.S. Surveyor General's Office
San Francisco, Cal.

Under and by virtue of the provisions of the 13th Section of the Act of Congress of the third of March 1851 entitled "An Act to ascertain and settle the private land claims in the State of California" and of the 12th Section of the Act of Congress approved on the 31st of August 1852 entitled "An Act making appropriations for the civil and diplomatic expenses of the Government for the year ending the 30th of June 1853 and for other purposes" and whereas the U.S. District Court for the Southern District of California rendered a decision whereby it recognized and confirmed the title and claim of Augustin Machado *et als.* to the tract of land designated as the Ballona in Los Angeles Co. as appears from the certified copy of the final Decree of the said District Court a copy of which is hereto annexed. The said tract of land was surveyed in conformity to the grant thereof and the said decision, And I hereby certify that the accompanying map is a true and accurate plat of the said tract of land as appears by the field notes of the survey thereof made by Henry Hancock, Deputy Surveyor under the direction of this office which having been examined and approved remain of record therein, said tract of land is described in the words and figures following viz.

Beginning at a pile of rubble rocks each some nine inches in diameter on a high conical hill being the north western terminus of a range of hills on the east.

Thence according to the true meridian the variation of the magnetic needle being thirteen degrees thirty minutes east, south twenty one degrees fifteen minutes east, ascending the ridge eighty chains to the top and along the same one hundred and seven chains and twenty one links to a sandstone rock, twenty one inches in diameter and two small rocks station.

Thence south forty eight degrees thirty minutes west one hundred chains to the base of hills one hundred and eight chains to the base of a spur from the east. One hundred and twenty five chains to a stake on a spur from the north east about four chains south of a lake of water some fifteen chains long and five chains wide station.

Thence south twenty three degrees forty five minutes west, at one chain and fifty links crosses a road, course east four chains to a stake station.

Thence south seventy six degrees thirty minutes west, at three chains enters the mouth of a cañada from the north east, at three chains and fifty links crosses a stream fourteen links wide course south eight chains and eight links to a stake and charred stake at intersection with the east boundary of Township Two, south range fifteen west eleven chains and fifty links north of a quarter section corner on the east boundary of section twenty four, twenty five chains across a cañada to the north base of hills thirty four chains and eight links to a large rock, the original corner and station.

Thence south twenty four degrees forty five minutes west thirty two chains to a stake on the north west base of the hills station.

Thence south seventy two degrees thirty minutes west along the base of hills thirty two chains and thirty three links to a stake station.

Thence south sixty six degrees, thirty minutes west along the north base of hills nineteen chains and sixty two links to a stake at the north east corner of a decayed corral. Station.

Thence south sixty four degrees fifteen minutes west nineteen chains and fifty links to a stake at base of hills Station.

Thence south fifty four degrees thirty minutes west, five chains to a point opposite the south east head of a bay twenty three chains to a stake on the west base of the hills thirty links east of the bay station, from which the average bearing of the north east shore of the bay is about north west, and at one hundred chains the Ballona creek discharges itself into the bay.

Thence south nine degrees forty five minutes west, seventeen chains to a stake on the east base of hills, six chains from the east shore to the lake station.

Thence south fifty three degrees west seventeen chains and thirty three links to a stake eight links east of the bay shore at the north base of hills station.

Thence north eighty one degrees west six chains to a stake sixty links south of the bay shore station.

Thence north fifty two degrees forty five minutes west fourteen chains and fifty links to a stake on the shore of the bay station.

Thence south seventy three degrees west eight chains to a stake station.

Thence south twenty eight degrees forty five minutes west five chains to a stake fifty links from the shore of the bay station.

Thence south sixty degrees forty five minutes west twenty one chains to a stake station.

Thence south eighty two degrees thirty minutes west seven chains to a stake on the north base of high hills station from which a pass in the said hills bears north eighty eight degrees forty five minutes west.

Thence south fifty two degrees west fifteen chains to a stake at north base of high hills station.

Thence south eighty two degrees west ten chains to a stake at the edge of bay station.

Thence south sixty degrees forty five minutes west eight chains to a stake at the north base of high hills and on the shore of bay sation.

Thence south fifty degrees forty five minutes west nine chains to a stake station.

Thence south forty three degrees fifteen minutes west at eleven chains and fifty links leaves the shore of the bay and enters sand hills eight and ten chains wide extending far to the north west nineteen chains and fifty links to a stake station at the east shore of the inlet from which the east shore of the inlet ranges north, twenty degrees west. The inlet for about one hundred and thirty chains is from eight to ten chains wide.

Thence south forty five degrees nine minutes west, eight chains and twenty one links to a stake and charred stake station on the west shore of the inlet.

Thence north twenty five degrees thirty minutes west forty three chains to a stake at high water mark on shoal water bay of the Pacific Ocean station.

Thence north twenty five degrees forty five minutes west sixty five chains to a stake at high water mark station.

Thence north thirty five degrees thirty minutes west one hundred and sixty chains to a stake at high water mark station.

Thence north thirty nine degrees thirty minutes west thirty chains to a stake station.

Thence north forty one degrees thirty minutes west thirty chains to a stake at high water mark station.

Thence north thirty seven degrees fifteen minutes west six chains to a stake at high water mark station.

Thence north sixty two degrees west one chain and fifty six links to a post opposite the mouth of the first barranca or gully being the north west corner of this rancho station.

Thence north forty nine degrees east two chains to base of southerly side of barranca with an average of one chain wide and the banks about thirty feet high coming from the north thirty eight chains to a stake in the pile of rocks on the high rolling table land extending south east for the distance of about one mile and terminating in low table land and bordering on the Ballona Bay which bay has its terminus at a distance of about one hundred chains south east from this point station.

Thence north fifty seven degrees one minute east one hundred and fifty two chains and ninety one links to four large rocks, station.

Thence north fifty nine degrees east eighty chains and twenty four links to a point at intersection with the south boundary of section thirty four in Township One south of range fifteen west, nineteen chains and ninety three links west of the quarter section corner eighty two chains and fifty links to a road, course west one hundred and twenty six chains and sixty four links to three large rocks each fifteen inches in diameter station.

Thence north fifty nine degrees and thirty minutes east fifty two chains to the rocks each eighteen inches in diameter station.

Thence north sixty three degrees east two hundred and forty one links to a stake being the most northerly corner of this ranch and station from which a willow tree twenty four inches in diameter bears south eighty degrees east distant three hundred and thirty two links (being a point agreed upon as the point where the alamo or cottonwood tree formerly stood).

Thence south fifty seven degrees thirty minutes east thirty nine chains opposite to and two chains east of a dry bed of a lake ten chains from east to west and three chains from north to south forty four chains and fifty links to a point cutting the south east corner of the lake at sixty two chains and fifty links crosses a road course east ninety chains to the center of a ravine thirty feet deep ninety six chains to a stake and charred stake at intersection with the south boundary of section thirty six in Township One south of range fifteen west, twelve chains and fifty eight links west of quarter section corner one hundred and thirteen chains and fifty six links to a stake and charred stake one hundred and fifty links north of a bunch of tunas, station.

Thence south fifty four degrees forty five minutes, east forty five chains and seventy nine links to a stake and charred stake at intersection with the west boundary of Township Two, south of range fourteen west thirty six chains and seventy five links south of the north west corner of said Township, eighty six chains and fifty nine links to a rock two and one half feet long eighteen inches wide and twelve inches thick imbedded in the earth being an original corner station, and

Thence south fifty nine degrees thirty minutes east nine chains and fifty links to timber at eleven chains and fifty links, crosses a stream of water eighteen links wide skirted with sycamore trees course south west at eighteen chains and fifty links crosses a road course southwest to base of hills some three hundred feet high and leaves timber, thirty eight chains and eighty one links to the place of beginning containing thirteen

thousand nine hundred and nineteen acres and ninety hundredths of an acre and being designated upon the plat of the public surveys as lot numbered thirty seven in Township One south of range fifteen west lot numbered thirty seven in Township Two south of range fifteen west of the San Bernardino meridian.

In witness whereof I have hereunto signed my name and caused the seal of the said office to be affixed at the city of San Francisco this Twenty third day of November A.D. 1873.

J.R. Hardenbergh
U.S. Surveyor General
for California

[MAP]

Now know ye that the United States of America in consideration of the premises and pursuant to the provisions of the Act of Congress aforesaid of 3rd March 1851 and the legislation supplemental thereto have given and granted and by these presents do give and grant unto the said Augustin Machado et al and to their heirs the tract of land embraced and described in the foregoing survey but with the stipulation that in virtue of the fifteenth section of the said Act neither the confirmation of this said claim nor this patent shall affect the interests of third persons.

To Have and to Hold the said tract with the appurtenances unto the said Augustin Machado et al and to their heirs and assigns forever with the stipulation aforesaid.

In testimony whereof I Ulysses S. Grant, President of the United States have caused these Letters to be made Patent and the seal of the General Land Office to be hereunto affixed:

Given under my hand at the City of Washington this eighth day of December in the year of our Lord One

Thousand Eight Hundred and Seventy Three and of the Independence of the United States the ninety eighth.

By the President U. S. Grant
By S. D. Williamson, Secretary

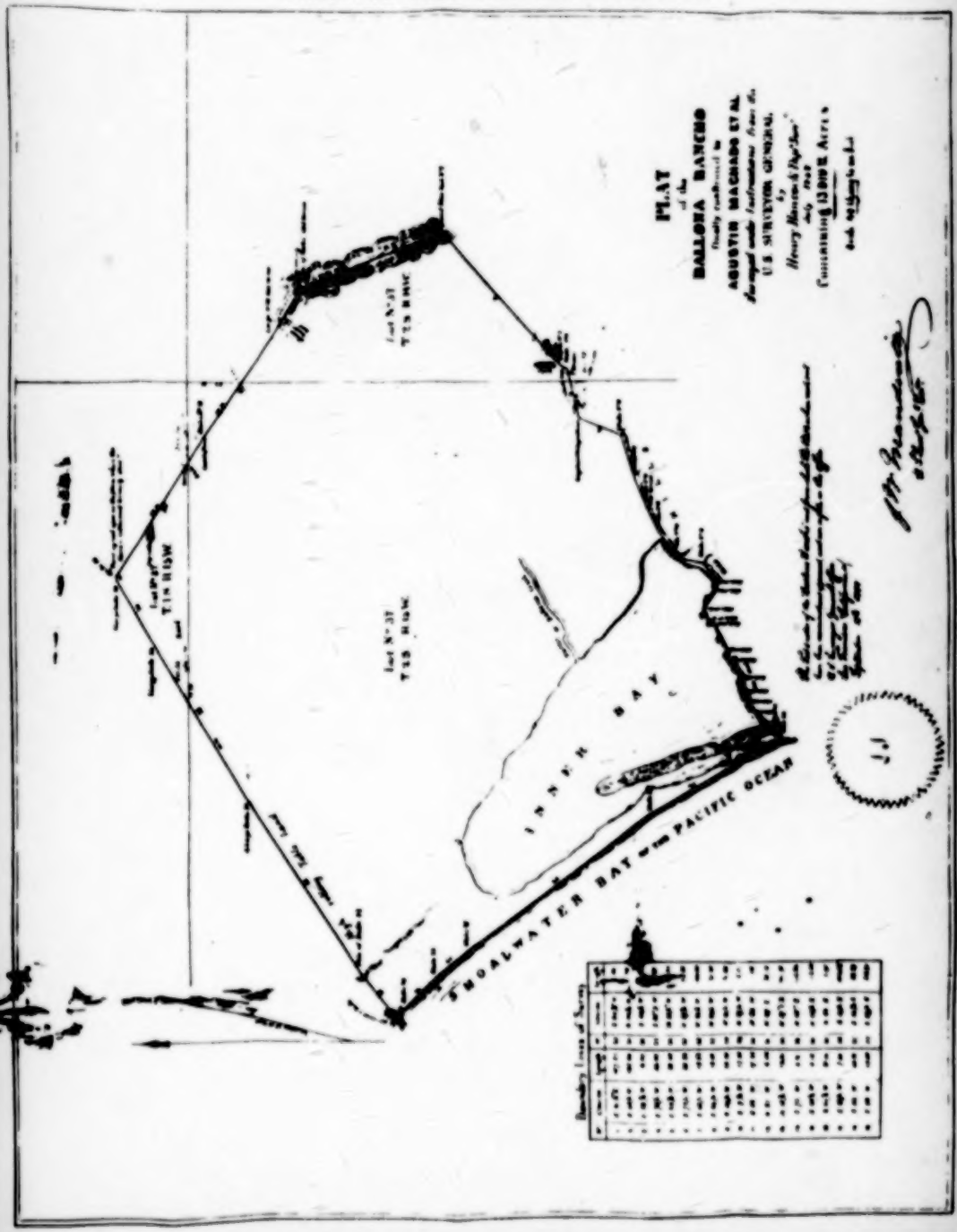
L. K. Lippincott
Recorder of the General Land Office
Recorded Vol. pp. 484 to 493 inclusive.

A full true and correct copy of the original recorded at request of Francisco Machado January 26th 1874 at 50 min. past 10 a.m.

A. W. Potts, Recorder
By C. W. Gould, Deputy

APPENDIX C-2

PLAT OF RANCHO LA BALLONA



APPENDIX D-1

J. W. Mandeville, Esq.
U.S. Surveyor General
San Francisco, Cala.

General Land Office
March 17, 1860

Sir:

The survey of the "Ballona" Rancho finally confirmed to Augustin Machade, et al is not approved.

Our objections to the survey are fully set forth in the following:

The confirmation is by boundaries. Beginning at a Cottonwood tree, running East 7835 varas, to a pole bridge, thence South 9800 varas to mouth of a creek (Estero) thence West along the Sea Coast 7300 varas to the deep gullies (Barrancas) thence Northerly 7800 varas to the place of beginning.

The survey returned is for 13,919 $^{90}/_{100}$ acres. A survey according to the courses and distances mentioned would not enclose that quantity by perhaps 2,000 acres. The plat shows however a large body of water called "Inner Bay" some three miles long by one wide, which is included in this area. There is no mention made of quantity in the grant or decree. When the Claimant comes to petition the Board, he describes the grant by its boundaries as above, and adds "containing one league of grazing land more or less." This is understood however to refer to the quantity of land of a particular character, that is "grazing" land within the Rancho. And this view is sustained by the Map (Diseño) on which about one third of the tract is shaded green and marked "Tierras de Siembra" (cultivated lands) the residue being marked "Somas Muertas" (barren hills). The grant and juridical possession referred to throw no further light upon the matter; the courses and distances being those of the decree. The Diseño bears a strong resemblance in form to the Survey, but that remarkable feature in the latter, the Inner Bay, is not shown on the former. A prominent natural object on the Diseño is a creek, name illegible, running Southerly through the Eastern part of the Rancho, and emptying into a

body of Water, designated "Playa" (coast or shore) which makes a boundary on one side of the Rancho.

The only creek found on the survey is one called "Ballona Creek" — doubtless the same above referred to. It empties into the "Inner Bay" not far from the South East corner of the Claim and from the Diseño it is plain that the body of water, into which this creek falls, is the boundary of the Rancho on that side. It is the only "Playa" found on the map and there is but one stream laid down. There would then appear to be no authority for embracing this Bay in the survey.

Had such an object existed within the grant, it could not have been overlooked or neglected in sketching the Diseño, nor have escaped notice and mention in the juridical possession. Again — the Diseño is drawn with some care, and the points of the Compass are designated thereon in the usual manner, and with tolerable accuracy, allowing for the variation of the Compass which is 13° 30′ East. It shows the North boundary a due East line. From the survey it appears that the place where the "Cottonwood" (place of beginning, see decree & c) formerly stood, was ascertained and agreed upon. That found, the survey should have run East therefrom (or at least the varation from that course should not have been greater than the ascertained variation of the Compass) 7835 varas — thence Southerly 9800 varas to a point on the shore (see diseño) a little East, of the mouth of the creek (Ballona). Thence along the coast (Playa) of the Inner Bay 7300 varas to the gullies (Barrancas) which will probably be found at the North end of this Bay — thence to the place of beginning.

How runs the Survey?

In the North East boundary, (which answers to the North of the decree) from the "Cottonwood" to the "Sand Stone Rock No. 2" there is an average departure of about 40° from an East course, treble the variation. Hence when the next line comes to be run, the South course for 9800 varas cannot be had without running to the Pacific coast, South of Inner Bay. But let the first line be run from the "Cottonwood" (and this it is presumed should have been the point of beginning) East, or at least not

more than 13° 30′ South of East, the distance called for of 7835 varas or about 326 chains, and we can then run from the point thus reached, 9800 varas before the Shore (Playa) of the Inner Bay is reached. Thence following that shore North West (West by the decree) to its Northern extremity and thence Northerly to the Cottonwood, and it is believed that the tract granted would be embraced within the lines, and a survey presented in accordance with the grant and decree.

The case is remanded for re-examination and unless good cause be shown to the contrary after notice to all concerned, for amendment of the survey, in conformity to the views of this Office as set forth in the foregoing.

Very respectfully

Your Obt. Servt.

Jos. S. Wilson
Commissioner

APPENDIX D-2

R. Hardenbergh, Esq.,
U.S. Surveyor General
San Francisco, Cal.

Department of the
Interior
General Land Office
Washington D.C.
Apr. 30, 1873

Sir;

This office has had under consideration the papers in the matter of the rancho Ballona in California. Augustin Machado et al. confs. a survey of which containing 13,919$^{90}/_{100}$ acres, was made by Deputy Surveyor Henry Hancock in July, 1858, approved by the Surveyor General of California Sept. 18, 1858 advertised October, 1860, and re-advertised in 1869.

The original grant was made on the 29th, Nov. 1839, by Juan B. Alvarado, then Governor of the Department of the Californias, to Augustin and Ignacio Machado and Felipe and Tomas Talamantes for the land known by the name of Ballona, bounded on the West by the ranch of the citizen Policarpio Higueroa, on the North by that of the citizen Alains; on the West (poniente mistake for Este) by that of the citizen A. Ignacio Abila, and on the South by that of the Sr. Jose Sepulveda. Juridical possession of the land granted was given on the 31st December, 1839 with the following described boundaries, to wit: "From the cotton-wood tree, to which cuts of a hatchet were given, to serve for a land mark a direction to the East were measured and counted seven thousand eight hundred and thirty-five varas, terminating at a little pole bridge which was fixed for a land mark at which point was the adjoining neighbor, Don Policarpio Higueroa, he not having manifested any objection it was given for a perpetual measurement. From thence the cord was stretched a direction towards the South, and were measured and counted nine thousand and eight hundred varas which terminated at the mouth of a creek (estero) a place which was fixed for a land mark, but when it was measured Antonio Ignacio Abila charged that this situation or place belonged to him, and having asked him for the documents

which would prove it his property he did not present them, but said the plat (diseño) was in Monterey for which cause it was fixed for a measurement. Proceeding to stretch the cord towards the west there were measured along the Sea-coast seven thousand and three hundred varas, which terminated at a point called the deep gullies ('barrancas') a situation which was fixed for a land mark. From there the rope was stretched in a direction towards the North, taking a course so as to strike the cotton-wood tree, whence the measuring was commenced, and there were measured seven thousand and eight hundred varas, the adjoining neighbors being Francisco Sepulveda & Maximo Ulinis, the former although he indicated that he had asked the Government for a small piece of this land; but as he did not present the memorial ('constancia') nor documents these were continued, and the measurement given.

The petition of the claimants soliciting the confirmation of their claim was presented on the 2nd day of October, 1852, to the Board of Land Commissioners and on the 24th of February, 1854, the said Board rendered a decree of confirmation for the land as described in the record of Juridical possession and on appeal to the District Court of the United States for the Southern District of California the decision of the Board of Land Commissioners was confirmed at the December Term 1855 of said Court, and it was "further ordered adjudged and decreed that the claim of the appellees to a certain tract of land in Los Angeles County, West of the City of Los Angeles — about three leagues and bordering on the sea shore called the 'Ballona' is valid, that said tract of land being the same now and for the last 18 or 19 years occupied by the appellees, and bounded as follows viz: Beginning at a cotton-wood tree at a considerable distance from the house of said rancho which is marked with hatchet cuts, thence running East 7836 varas to a little pole bridge thence South 9800 varas as to the mouth of a creek (Estero) thence West along the sea coast 7300 varas to the deep gullies (Barancos) thence Northerly 7800 varas to the place of beginning; reference for a more particular description being had to the grant, map and juridical possession on file in this case." At the December Term, 1856, of said court the appeal to the

Supreme Court of the United States was dismissed and the decree rendered on the 19th day of December, 1855, made final.

A survey of this rancho was made by Henry Hancock in July, 1858, approved by the U.S. Surveyor General for Cal'a, on the 18th of Sept. 1858 and transmitted to this Office immediately thereafter, which said survey after examination here, was returned to the Sur. Gen'l. on the 17th day of March, 1860, for re-examination, and "unless good cause be shown to the contrary, after notice to all concerned, for amendment of the survey in conformity to the views of this office as set forth in" said letter of March 17, 1860. What those views were it is not necessary now to examine, for before the survey was amended the Act of July 1st 1864, (13 stats, p. 332) was passed; the Honorable Secretary of the Interior by letter of November 19th, 1868, directed this survey to be published under said Act; and the said survey having been so published in March and April, 1869 was duly objected to in accordance with the provisions of said Act, and is therefore now before this office, on its merits, without regard to any opinion expressed by this office prior to said publication.

This rancho was confirmed by boundaries and these boundaries are clearly set forth in the final decree of confirmation. The survey now under consideration must conform to said boundaries as explained by the reference in the decree to the grant, diseño and juridical possession.

For convenience I commence the examination of this survey by a consideration of the line drawn between two of the natural objects mentioned in the record of juridical possession and final decree in this case, to wit, the barancas or deep gullies and the alamos or cottonwood tree, the last of which is described in the record as the place from which juridical measurement was commenced.

The first named of these natural objects is not shown on the diseño of the Ballona rancho, nor is it mentioned in any of the original papers filed in this case before the Board of Land Commissioners for Cal'a, except in the juridical possession where it is described as having been reached by measuring from

the mouth of an estero, West, along the sea-coast seven thousand three hundred varas. On the present survey these gullies are located at the extreme south-western corner thereof.

The second of these natural objects is not particularly described on the diseño in this case, though at the North-west corner of said diseño is marked "laguna del Alamo y lindero del ser Alamis" (lake of the cottonwood and boundary of Senor Alamis). The directions of the lines run, as given both in the juridical possession and final decree, show however, that this cottonwood tree was at the northwest corner of the Ballona rancho, a "long distance" west from the "house" of said rancho, and also west 9835 varas from "a little pole bridge," and in making the survey now before me the deputy surveyor has scaled the site of said cottonwood at the northwest corner of his survey, and at the intersection of the southern line of the rancho Rincon de los Buyes, granted in 1821, and 1843, to B. Higuera and patented Aug. 27th, 1872, with the south-eastern line of the rancho San Jose de Buenos Ayres granted in 1843, to M. Alamis and patented July 25th, 1866. Less than forty chains east from this point, as appears by the field-notes of the survey in this case, is a dry lake ten chains from east to west and three chains from North to South, thus apparently answering the description of the northeastern corner of this rancho on the diseño where is found the "lake of the cottonwood and the boundary of Alamis" i.e. rancho San Jose de Buenos Ayres. The diseño further shows the Western boundary of the Ballona to be the eastern boundary of Sepulveda's rancho San Vicente, and the record of juridical possession shows that this boundary of Ballona was also the eastern boundary of a part of Maximo Alimas's rancho, the last of which was patented by the U.S. in 1866 as before stated. It also appears by an inspection of the diseño, and of the plat of Hancock's survey that the relative position of the northwest and southwest corners and the creek as shown on both diseño and plat, is substantially the same.

The testimony filed by contestants relative to this boundary is as follows:

Fernando Sepulveda in an affidavit dated April 26th, 1869, before A. E. Sepulveda, Deputy Clerk of the Dist. Court for Los Angeles Co. Cal'a, testifies that he was raised upon the rancho San Vicente y Santa Monica; that his father was the grantee of said rancho; that at the time of Juridical possession of said rancho in 1828, the east boundary line was established by measuring from the head of the arroyo Seca at a place called Cañada de mangles and ending at the opening of said arroyo into the sea at a place called deep gullies and including the Laguna de los Alamos and loma colorada; that the deep gullies are very near the margin of the estuary of the seca in the Ballona rancho; that the Ballona rancho never extended west of a north and south line running from the loma colorada to the deep gullies; and that the survey of the Ballona as now made running from the arroyo seca, south west to the ocean, embraces a large portion of the rancho San Vicente y Santa Monica. There is also filed on behalf of contestants an affidavit dated May 3, 1869, signed by Salesburg Haley and Jose Dolores Sepulveda to the effect that they are the owners of the San Vicente y Santa Monica confirmed to Ramon Serrano Sepulveda L.C. No. 457, which rancho adjoins the rancho Ballona on the west; that they are familiar with all the boundaries of the rancho owned by them as marked out in 1828, by Jose A. Carillo; that the east boundary line of said rancho embraces the following known objects, to wit, the "Canada de Mangles, the Arroyo Alamis or seca, the laguna de Alamo, the table land to the loma colorado, thence in a direct line to the deep gullies at the sea beach near to the estuary of the Ballona;" and that the present survey of the rancho Ballona embraces a large tract of the rancho San Vicente y Santa Monica.

In opposition to the statements contained in the foregoing, there was filed in behalf of the owners of Ballona with the Sur. Gen'l the following affidavits:

1st. Affidavit dated January 29, 1870, by Jose del Carmen Sepulveda in which he states that he is 47 years of age, a citizen of Los Angeles, and the son of Francis Sepulveda

claimant for the rancho San Vicente adjoining the Ballona on the northwest; that he is well acquainted with said ranchos and was present when juridical possession was given by the Mexican authorities of the line between said ranchos, and knows the position of the cottonwood (alamos) trees and the deep gullies (barrancas); that the tree decayed and fell to the ground and thereafter the place where it stood was marked by a pile of stones; that the deep gullies are prominent and easily known, and that the corners fixed by the U.S. Surveyor Hancock are at the identical places where the alamos stood and where the barrancas now are and were at the time of juridical measurement; that the line of Hancock's survey between those two points is substantially the line of the juridical possession; and that for many years before Hancock's survey this line has been recognized as the dividing line between those two ranchos.

2d. The affidavit dated Jany 29, 1870, by Tomas Talamantes in which affiant states he is 78 years of age a resident of Los Angeles and one of the grantees of the rancho Ballona granted by Alverado, and was present when the juridical possession of said rancho was given in 1839; that the line of the juridical survey between the Ballona and San Vicente ranchos was a direct line from the cottonwood trees to the deep gullies; that the line of Hancock's survey between these two points is substantially that of the juridical possession; that he was also present when possession was given of the rancho San Vicente in 1846, as was also Francis Sepulveda and Augustin Machado; that a line was run from the cottonwood to the barrancas which was the same as that established in 1839, as the line of the rancho Ballona, and that Sepulveda, Machado, and affiant agreed to the same.

3d. An affidavit dated January 29, 1870, by Ignacio Machado in which affiant states he is 80 years of age, a resident of Los Angeles, Cal'a, and one of the original grantees in 1839 of the rancho Ballona; that he was present when juridical possession was given of said rancho, knows the position of the cottonwood tree and deep gullies, the former of which was then about three feet in diameter and

because of its decayed state stones were placed at its roots the better to mark the place; that said tree is now destroyed, but the pile of stones at the date of this affidavit was in about the same condition as when juridical possession was given, easily found and not easily mistaken; that when the possession of the Ballona rancho was given in 1839, Francisco Sepulveda (who died in 1853) was present and said he wanted a piece of the land but upon being asked by the judge if he had any document or grant he replied he had not, whereupon the alcalde (Dominguez) ran the line from said cottonwood to the barrancas; that when Hancock made the survey of the rancho Ballona, Jose del Carmen Sepulveda, and Jose Maria Sepulveda sons of Francisco Sepulveda were present and went with affiant and Hancock and pointed out and agreed upon the Barrancas and the Alamos as the dividing line between San Vicente and Ballona, and that this line as drawn by Hancock is substantially the same as that of the juridical possession.

4th An affidavit dated Feb'y 3d, 1870, by Henry Hancock who swears he is the U.S. Deputy Surveyor who, in 1858, made the survey now under consideration; that at the point marked on the plat of his survey "Station 31. Barranca or gully," Jose del Carmen Sepulveda and Juan Maria Sepulveda were present as the representatives of the rancho San Vicente y. Santa Monica and pointed out said barranca or gully as the place where the rancho San Vicente and Ballona joined each other on the sea shore; that from that point Jose Carmen Sepulveda who was then residing on the ranch was efficient in riding ahead and pointing out the different piles of stone along the plain up to what on the plat of affiants survey is marked "Station 35;" that on arriving at that point, "which is near a small dry arroyo (not marked on the map) some twelve links wide, course southwest, the said Sepulveda and the owner of the Ballona agreed upon a point on the right bank of said arroyo, as the point where the Alamos or cottonwood tree, called for in my instructions as a point in the boundary line of La Ballona, once stood;" that the stations on said map from 31 to 36 were claimed by the

representatives of the ranchos San Vicente and Ballona, as the dividing line of said ranchos; that while running the said line no other points were suggested or talked about by any one; and that at the time of the survey it was understood by the owners of both ranchos that affiant was making the survey for both ranchos.

From a careful review of the foregoing it is clear that the weight of evidence is to the effect that the western boundary of the Hancock survey of the rancho Ballona was correctly located according to the calls of the grant as given in the final decree and record of juridical possession; thus corroborating the apparent location of said boundary as shown by a comparison of the original title papers of the Ballona rancho with each other and with the boundaries of adjoining ranchos. The length of this line according to the measurements given in the final decree and record of possession is 7800 varas equal to about 330 chains: the distance between the barrancas and site of the cottonwood as shown by the U.S. survey is about 360 chains a difference of 30 chains, or 3/8 of a mile.

From the cottonwood the boundary on the north extends east, according to the final decree and record of possession 7835 varas to a "little pole bridge." Where this bridge is located is not shown by any evidence in the case; yet near the northeast corner of the diseño is a stream of water running north and south to an estero near the ocean, from which it is probable that this stream passes near said bridge. On the plat of Deputy Surveyor Hancock's survey the northeast corner thereof is placed near said stream, and to that extent corresponds with the diseño; and as said northern boundary of the rancho Ballona, as shown by said survey adjoins for its entire length the rancho Rincon de los Bueyes which has been patented by the United States and as the length of said line east from the site of the cottonwood to the northeast corner as shown by the survey, is 90 chains, or more than one mile shorter than the length of said line as shown in the record of possession and final decree, I accept as the true boundary on the north the line as run by Hancock and represented on the plat now under consideration.

From the northeast corner the boundary on the east extends according to the final decree and record of possession south 9800 varas, equal to about 413 chains to the mouth of an estero. That this boundary is not a straight line appears by the diseño, and upon an examination of the U.S. Survey it also appears that the general shape of this boundary as given on the diseño has been preserved in said survey, that is to say, from the northeast corner it runs a short distance south and east and then, according to the diseño, due south, but according to the U.S. Survey south and west to the ocean making the entire survey form a nearly square figure. As before stated the call for the south-east corner of this rancho is the mouth of an estero, or where it empties into the ocean, which point as shown by the plat and field notes of the survey by Hancock is at some place east of the south-east corner of said survey and wholly outside its limits. The character of this estero, or inner bay as it is marked on the plat of survey, is testified to by Tomas Talamantes, Jose del C. Sepulveda and Ignacio Machado, who in substance say it is not an arm of the sea, and that much of the tract represented as inner bay is suitable for pasturage. That this estero was included in the grant is shown by the diseño where the word "estero" is written near the south boundary and about midway between the east and west boundaries as there represented, and that it is not an arm of the sea is evident from the field notes and plat of survey which are not contradicted by any evidence in this case, and which show that what this office in 1860, mistook for the mouth of an estero was meandered on its southeast side to within a few chains of the ocean, and that on the east of said meandered line were found high hills, that this inner bay is not an arm of the sea and that the mouth of this estero is wholly outside the present survey of the Ballona rancho is also shown by an official survey of the rancho Sansal Redondo which adjoins the southern portion of the eastern boundary of Hancock's survey of Ballona.

The eastern boundary of this rancho as surveyed by Hancock is therefore approved and so too is the South boundary as thus surveyed, though it is apparent that had the claimants or any party in interest objected to this survey the eastern terminus of

the South boundary and the southern terminus of the eastern boundary might have been extended, according to the final decree on title to the mouth of the estero above mentioned, that is to say to where it empties into the ocean.

As has been already remarked the diseño and the plat of Hancock's survey in this case each inclose a tract of land of nearly square form; and to this I add that the aggregate number of lineal varas measured by the Mexican Alcalde in giving juridical possession as shown by the record thereof, give, when reduced to chains, a distance nearly as great as that run by U.S. Deputy Surveyor Hancock and represented on the aforesaid plat of survey. The distances from point to point are as follows:

According to the record of possession and final decree, from the cottonwood east to the pole bridge is 7835 varas, equal to about	335 chains.
Thence south to mouth of Estero 9800 varas, equal to about	410 chains.
Thence west to the barrancas 7300 varas, equal to about	308 chains.
Thence north to the cottonwood tree 7800 varas, equal to about	330 chains.
A total length of	1383 chains.

According to the plat of survey, a direct line from the site of the cottonwood east to the northeast corner is about 240 chains.

Thence south and east to point marked no. 2; and thence to southeast corner of survey, is about	520 chains.
Thence westerly to barrancas is about	335 chains.
Thence northerly to cottonwood site is about	360 chains.
A total of	1455 chains.

thus showing the total distance measured by the Alcalde to be 17 miles and twenty-three chains, and the total distance from point to point as established by Hancock 18 miles and 15 chains, making a total difference between the two measurements of but 72 chains or nine tenths of a mile.

From the foregoing facts I decide that the survey under consideration containing 13,919 $^{90}/_{100}$ acres and made by U.S. Deputy Surveyor Henry Hancock in July, 1858, should be approved by this office.

You will give notice of this decision to all parties in interest and allow sixty days from the service thereof for appeal to the Hon. Sec. of the Interior, at the expiration of which time you will make the usual return.

Very respectfully,

Willis Drummond
Commissioner